I.
CAPITOL OBSERVATIONS

A HUMANITARIAN CRISIS INVOLVING CHILDREN

More than 50,000 unaccompanied minors—mostly from El Salvador, Guatemala and Honduras have crossed the southwestern border of the United States since October. At press time, the children were being held at four U.S. Military bases. Their entry into our country has developed into a hotly contested political debate. Hopefully, we will be able to put politics aside and recognize that this is a humanitarian crisis of huge proportions.

President Obama has asked Congress for $3.7 billion to care for the children and to increase border security. So far the response has been mixed and nothing has happened. Gov. Rick Perry is placing 1,000 National Guard troops on the border, which may play well with some folks, but makes me wonder what he is thinking. Clearly our leaders in Washington, as well as those in the border states, have a humanitarian crisis on their hands. In times like this, the American people have always been extremely caring and compassionate. Hopefully, we will realize in this crisis that we are dealing with children. Based on what I am seeing daily on the nightly news, however, I really have to wonder where this crisis is headed.

Apparently, the fate of the children will be handled through the immigration process and determined by an immigration judge and asylum officials. As I understand it, if an immigration judge determines that a child faces a credible threat of death upon his or her return to their own country, that child could be granted humanitarian relief. I am also told that some immigrants from Mexico and Canada are not entitled to an automatic hearing. But apparently in this instance children coming from Central American countries do qualify.

The conditions in the Central American countries mentioned above are very bad. In fact, they are said to be horrendous. The immigration issue, which up to this point has dealt primarily with adults coming into the country, now involves children of all ages. Reportedly, the children were sent to America to escape high rates of murder and extreme gang violence in their countries, especially in El Salvador and Honduras. The conditions there have been described as “war-like.” I was shocked to see on the television news protestors who were actually trying to block buses carrying children to the processing centers. People of faith must get involved and let our political leaders know that these children can’t be used as political pawns. Hopefully those in authority will put politics aside and deal with a most serious humanitarian problem. Is that really asking too much?

The failure of Congress to deal with the immigration issue has been a most serious mistake. There are a number of industries—primarily agricultural and service-related—that have done very well financially hiring folks who have come into this country primarily from Mexico. Obviously, many of these workers are here illegally. If you doubt where they are “working” in our country do a little checking around to see first-hand if they really are. I believe you will find many hard-working Mexicans doing work in the fields, especially at harvest times, in hotels and restaurants, with landscaping companies and in construction jobs such as roofing.

There may be a silver lining in the present crisis even though it’s well hidden at this juncture. Perhaps we now have an opportunity to turn the crisis into something good. There is a definite need to pass meaningful immigration reform. Having to deal with the current crisis may force the White House and Congress to realize they need to work together, come up with a workable plan and then get it passed into law. But in any event, until that happens, and we face up to the immigration problems, we must take care of the children!

II.
THE ONGOING SAGA OF THE GENERAL MOTORS SAFETY PROBLEMS

CRITICAL GM IGNITION SWITCH CASE MOVED BACK TO STATE COURT

Despite an attempt by General Motors (GM) to move the wrongful death lawsuit filed by the Melton family to the federal court system, U.S. District Judge Thomas Thrash, Jr. ruled that the case should be handled in a Georgia state court. That happening made it a very bad day for GM. By trying to move the Melton lawsuit to federal court, the automaker was attempting to avoid having to defend the case in Cobb County, Ga. GM didn’t want to have key company lawyers, engineers and officers put up for depositions and be questioned under oath. They also had to know that a jury, after hearing the damning evidence against GM, including its lengthy cover-up of a known safety hazard, would punish GM severely. The awarding of punitive damages is something the automaker definitely wants to avoid.

As we have previously written, Brooke Melton, a 29-year-old nurse, was killed in a car crash near Atlanta in 2010 while driving her 2005 Chevrolet Cobalt. The ignition switch in her car failed and caused her death. We will prove that the defective switch caused the Cobalt to lose power, stall and crash. Brooke’s parents sued GM after their daughter’s crash was linked to the defective ignition switch. They settled with GM last year for $5 million. But then in Feb-

BeasleyAllen.com
ruary the automaker finally admitted the existence of a defect it had known about for 11 years. GM, as a direct result of the Melton lawsuit, issued a massive recall. The Meltons asked that their settlement be rescinded and they refiled the lawsuit against GM. Brooke's parents, Ken and Beth Melton, wanted to keep the case in Cobb County, Ga., where it belonged. As expected, Judge Thrash rejected GM's claim that the Meltons had fraudulently joined the dealer, and sent the case back to state court.

GM initially recalled about 780,000 2005-07 Chevrolet Cobalt and Pontiac G5 vehicles on Feb. 13. Twelve days later, the automaker expanded the recall to include an additional 590,000 model-year 2003-07 Saturn Ion, Chevrolet HHR, Pontiac Solstice, and Saturn Sky vehicles. At that juncture the recalls encompassed 2.6 million vehicles, and GM knew—long before the recalls—that at least 13 deaths related to the defect had occurred. GM is now the subject of a federal investigation, facing allegations of a cover-up, and was issued a $55 million civil fine from federal regulators regarding the company's massive delays in reporting safety problems.

Now that the Melton case will remain in state court, our firm, along with Lance Cooper's firm, will push the case, which has been described in the media as the "linchpin" of the GM ignition switch litigation, through the discovery phase and to trial. Lance is the Georgia lawyer who uncovered the defective ignition switch problems. Without his good work, I am convinced GM would never have revealed the defect to either the National Highway Traffic Safety Administration (NHTSA) or their customers.

The key to the overall General Motors litigation picture now is taking depositions under oath of key people. The Melton case will be the focal point of the ignition switch litigation. Without any doubt, the case will be watched closely by the media, the public and certainly by other automakers.

Ken and Beth Melton were willing to return the $5 million they received last year from GM, but the automaker refused to take it back. Now we will prove that GM fraudulently concealed important evidence from Lance and the Meltons and, as this case progresses, there won't be any doubt about that. The Melton case truly is the linchpin of the entire litigation and I can assure all of our readers that GM knows it!

**GM ESTIMATES THE COMPENSATION FUND PAYMENTS WILL TOTAL $400 MILLION**

In response to claims of deaths and injuries related to its defective ignition switch, General Motors (GM) established a victim compensation fund, telling the public that it is uncapped. But in a recent financial report to its stockholders, GM says it estimates the fund will cost the company about $400 million. As we have stated, GM has recalled more than 17 million vehicles directly related to the ignition switch problem. With the number of vehicles involved, $400 million works out to just $22 per car. But as we have mentioned previously, the economic loss to the owners of the recalled cars isn't even in the compensation fund.

GM has admitted the ignition switch defect is the cause of 13 deaths and 54 crashes, but independent consumer advocates believe the numbers are very much higher. Some experts say more than 300 deaths. Investigations have revealed GM knew about the ignition switch defect for 11 years before disclosing it to the National Highway Traffic Safety Administration (NHTSA) and the public. Hundreds of people have been killed or seriously injured, never knowing of the link between their GM vehicle and the crash, and that is a national tragedy.

This estimation to pay claims for death and serious, disabling injuries is totally inadequate, and is not consistent with a no-cap compensation fund. The fund doesn't even include all of the recalled cars and there have been deaths and injuries involving those cars. As Lance Cooper, our partner in the GM litigation, says:

_The $400 million is an arbitrary number that should not matter if GM has truly given Ken Feinberg complete discretion to make awards. If throwing out a firm number is supposed to send Mr. Feinberg a message, then GM is, once again, saying one thing but doing another. Obviously, GM is guessing what it may have to pay under the plan unless they have an understanding with Mr. Feinberg, which I do not believe they have, given his public representations to date. What is most important is that Mr. Feinberg do the right thing and make full and complete awards for all eligible claims regardless of the ultimate total amount awarded. If he does that, given our understanding of the number of claims, the number will certainly wind up being much higher than $400 million._

GM's estimated cost of the compensation fund is especially low considering GM is currently trying to get the Bankruptcy Court to enjoin victims from filing claims against "Old GM" related to its defective ignition switch. This would force more victims to use the victim compensation fund, shutting them out of the right to trial by jury, thus avoiding punitive damages. GM says Mr. Feinberg has full decision-making power over the fund, as to who qualifies and how much they are awarded. GM says both to the American people and to Congress that it will take care of all of their victims. But the question on the table is: Can GM be trusted to live up to that promise? Considering that the automaker misled the Bankruptcy Court, NHTSA, and the public years including its own customers, hiding a known defect, and the fact that death and injuries had been caused by the defect, I seriously doubt that GM can be trusted.

When GM CEO Mary Barra addressed her employees and the public June 5, she expressed sympathy for victims and their families, saying, "...we are going to do the right thing for the affected parties." Now it appears that somebody else at GM is calling the shots on the automaker's litigation strategy. In any event, it's time for GM to quit playing games and come clean about its massive safety problems.

**THE SENATE HEARING WAS NOT A GOOD DAY FOR GM**

The head of General Motors' legal department, Michael P. Millikin, along with CEO Mary Barra, testified on July 17 before a U.S. Senate Committee. When the day was over, it hadn't been a good day for the automaker. Ms. Barra again says her company suffered from a "pattern of incompetence and neglect," but she still insists there was no cover-up involving the ignition switch defect.

But an examination of so-called "death inquiries" by the National Highway Traffic Safety Administration (NHTSA) following crashes involving GM vehicles, it is apparent multiple people at GM repeatedly avoided answering questions about the problem, even with internal knowledge of multiple deaths. Independent safety experts believe the number of deaths is much higher than the 13 GM admits to. In fact, 300 deaths are a much more accurate number. It should be noted that the concealment of critical safety information is at the center of an ongoing investigation of GM being conducted by the U.S. Justice Department.

After watching the presentations during the hearing, I am more convinced than ever that General Motors intentionally covered up a known defect that has killed and badly injured hundreds of innocent people. No reasonable person should believe that only a few engineers and lawyers were responsible for conduct that is as bad as I have seen during my 35 years of handling product liability litigation. If GM operated in the manner described before the Congressional
committees, and as found by the so-called independent investigation paid for by GM, then the automaker needs to clean house and bring in new blood—men and women—who will do more than talk about bringing about a new safety culture, and truly make safety a reality at the company.

Although the Senate hearing was beneficial, there is still much work to be done. It is more important than ever that the Melton case in Georgia move forward. It is clear from the hearing that GM does not want the public to know the whole truth about what all of its employees, including senior management, knew about the company’s safety issues and when they knew about them. Only when the Meltons finally have their day in court will we learn the whole story about GM's cover-up of a known defect. That day will now be in Cobb County, Ga., since this case was sent back to state court.

General Motors is not only guilty of gross negligence that borders on criminal conduct, but it is clearly guilty of fraud in its dealings with the government, the courts and the American people. Documents obtained by The New York Times are more evidence of an internal cover-up by GM. GM must be punished for what it has done in a decade of incompetence, neglect and cover-up. Unfortunately, GM still does not accept full responsibility for its wrongdoing. Its attempts to blame a few individuals for what was company-wide incompetence, wrongful conduct and cover-up simply does not meet the “smell test” and won't be accepted by the American people.

**OUR MEETING WITH KEN FEINBERG**

After a meeting with Kenneth Feinberg, General Motors (GM) Victims Compensation Fund administrator, we decided to give the plan a chance. I, along with Cole Portis, who heads up our firm's Products Liability Section, and Lance Cooper, founder of The Cooper Firm based in Marietta, Ga., met with Mr. Feinberg, at his request, on July 9 in Atlanta. We agreed that the details of our discussions would be confidential.

I have been somewhat critical of the manner in which General Motors set up the compensation plan that was to be administered by Mr. Feinberg. For example, General Motors made the criteria for eligibility much too restrictive and limited. While I believe the criticism was justified, I agreed to meet with Mr. Feinberg to discuss how the plan would be implemented. During the meeting, we had a candid discussion covering a broad range of topics relating to the General Motors litigation. This included how the plan would work for our clients. I must say that I was impressed with Mr. Feinberg's candor and also his willingness to listen to our views. While we didn't agree on everything, I do believe the meeting was productive for all concerned.

At the conclusion of the lengthy meeting, we have decided to submit a number of claims, including death claims and those involving personal injury, to the compensation fund. I believe our clients will receive fair treatment from the Claims Administrator. Of course, there will be clients of ours who will prefer to keep their claims in the courts and we will honor their decisions. We will also continue to file lawsuits, but will give the plan a chance to work. But if the plan doesn't work for our clients, we will have the option of going back to the court system. I am reasonably sure we will have some cases that will be heard by a jury.

**GM'S AD CAMPAIGN STARTED LAST MONTH**

I was shocked to see the paid ad that GM placed last month in a number of national newspapers, including USA Today, the Wall Street Journal, and The New York Times. If anybody believes the message from GM in this ad about safety is accurate, I suggest they check with the lawyers in our firm who are handling the defective ignition switch litigation. For GM to tell folks the key ring is the only problem is just another of a series of mistruths from the giant automaker. The claim by GM that only having your key on the ring makes a recalled Cobalt safe to drive is definitely misleading and that's because it's not true. Take a look at the ad which was in USA Today on July 16. I am sure it was placed—by coincidence—one day before the Senate Committee hearing. GM had to know it would take a real beating the following day.

**THE KEY TO SAFETY**

Right now at General Motors, we're working hard to repair the vehicles involved in the ignition recall. If you are driving an affected vehicle, until the repairs have been performed, there's one simple step you can take to make driving your vehicle safe and worry-free.

Use a single key.

It is very important that you remove all items from your key ring, including your key fob, leaving only the vehicle key. Our engineers have run extensive tests to make sure the weight of a single key can't move the switch to the wrong position.

Also, before exiting the vehicle, make sure the vehicle is in “Park,” or for a manual transmission, put the transmission into reverse gear. In both automatic and manual transmission cars, set the parking brake. And please remember to always fasten your seat belt.

We want you to know we’re working to make it right. Until then, there’s one simple step you can take to make driving your vehicle safe and worry-free.

Use a single key.

My recommendation to any person owing a recalled GM vehicle that has the defective ignition switch is to take it immediately to a GM dealer and if no replacement part is available, then park it. GM will be held responsible for any deaths and injuries that occur because an owner of a recalled vehicle believed this ad and continued to drive a car with a defective and dangerous ignition switch.

**GENERAL MOTORS DELAYED A RECALL IN ANOTHER IGNITION SWITCH CASE**

General Motors knew of ignition switch problems with 6.7 million midsize and large cars for 11 years, but the automaker failed to warn customers and issue a recall until last month. Documents, released by the National Highway Traffic Safety Administration (NHTSA) on July 18, show yet again that GM hid safety problems on its older models. This also exposes an all-too-familiar pattern of ignition switch problems in millions of GM vehicles in the past 10 years. As this issue was being sent to the printer, GM had issued 60 recalls covering 29 million vehicles. So far this year more than 17 million of those were for ignition problems.

GM's recall of the midsize and large cars included the 2000-2005 Chevrolet Impala and Monte Carlo, the 1997-2005 Chevy Malibu, the 1999-2004 Oldsmobile Alero, the 1998-2002 Oldsmobile Intrigue, the 1999-2005 Pontiac Grand Am and the 2004-2008 Pontiac Grand Prix. All have the very same ignition switches as the Cobalt and the other vehicles in the first recall by GM.

Source: Foxbusiness.com

**GM STOPS SALES OF SOME CADILLACS OVER IGNITION ISSUE**

I have begun to wonder if the General Motors safety-related recalls will ever end. Apparently, no time soon. GM ordered dealers last month to stop selling certain
Cadillac models. That was because of the very same ignition switch problem. As you may recall, GM recalled 554,328 Cadillac CTS 2013-2014 and SRX 2004-2006 vehicles in the U.S. on June 30 because of the defective ignition switches. GM issued the urgent stop-sale order on July 2, updated the order on July 8, but didn’t see fit to notify NHTSA promptly, which should come as no surprise.

III.
A REPORT ON THE GULF COAST DISASTER

THE DEEPWATER HORIZON CLAIMS PROGRAM IS UP AND RUNNING AGAIN

The Deepwater Horizon Economic Settlement Program is once again processing claims to payment despite BP’s best efforts to stop the claims payment process. Claims Administrator Pat Juneau and his staff have been working overtime to get the Program re-started after BP’s bitter fight to destroy and scuttle the Settlement it agreed to in 2012. Multiple efforts by BP to stop the settlement process have failed in the appellate courts. While BP could still seek Supreme Court review of the Fifth Circuit’s rejection of the company’s causation arguments, the developments of late have been very encouraging.

Understandably, some frustration can be expected given the amount of uncertainty the Program has had to deal with in the last few months thanks to BP and its unlimited resources. BP has attacked the Settlement, the Court, Claim Administrator Juneau, his staff, various claimants and their lawyers, and has launched a multi-million dollar ad campaign to smear the Program nationally. In addition, the Program is trying to implement Policy 495 (the matching policy). Sufficient to say, the Program has been under an immense amount of pressure and uncertainty—all created by BP—but the lawyers in our firm who are involved are very optimistic the Program will weather this storm and get back to making citizens and businesses of the Gulf whole.

THE STATE OF ALABAMA’S CASE IS NOW SCHEDULED FOR TRIAL

Recently, Judge Barbier entered an order setting the State of Alabama’s case against BP and its contractors for trial in November of 2015. As anyone that understands litigation knows, a scheduling order with strict deadlines is a very positive development for the State. True to Judge Barbier’s no-nonsense approach, the order maintains an aggressive schedule, with fact and corporate representative depositions to begin in November 2014 and expert discovery concluding in the spring of 2015.

The case seeks to make the State whole for tax revenue losses, increased public service costs, physical property damage and various departmental response and recovery costs associated with the Deepwater Horizon oil spill. Our firm represents the Governor of Alabama, and Rhon Jones and Parker Miller are heading up the case on the Governor’s side, along with Jenna Day and Rick Stratton, other lawyers from the firm. We have been working very closely with Attorney General Luther Strange and his staff Corey Maze and Win Sinclair from the Attorney General’s office are assigned to the project and they have done very good work. Frankly, all of the lawyers working together, have done an outstanding job in what will be an extremely important case for the State of Alabama.

IV.
MORE AUTOMOBILE NEWS OF NOTE

JOAN CLAYBROOK RECALLS IMPORTANT PRODUCT SAFETY ISSUES SHE DEALT WITH AS HEAD OF NHTSA

In working on the General Motors (GM) defective ignition switch litigation, I am reminded about the important role of a number of people who have worked extremely hard attempting to make sure products are safe, and that the public is notified of potential hazards and dangers in a timely manner. Unfortunately, in the case of GM, both the automobile manufacturer and the organization charged with overseeing public safety—the National Highway Traffic Safety Administration (NHTSA)—have dropped the ball. Not only did GM intentionally hide the defect for years, but NHTSA simply missed it. But in its defense, their missing the defect was assisted by intentional misdirection from GM.

The GM litigation prompted me to think about my longtime friend Joan Claybrook, who was head of NHTSA from 1977 to 1981 during President Jimmy Carter’s administration. Joan went on to serve as president of Public Citizen from 1982 until 2008. I got to know Joan through Public Citizen. Recently, I asked Joan how she felt GM would have fared under her administration as head of NHTSA. I knew, without asking, that there would have been earlier recalls and many fewer deaths and injuries caused by GM’s incompetence and wrongdoing if Joan had been at the helm at NHTSA from 2001 through 2010.

In reply to my query, Joan sent me a very nice note, which also included some insightful thoughts about product safety and some of the important issues she dealt with while at NHTSA. With her permission, I’d like to share an excerpt from Joan’s note, without any edits, about some of these interesting situations:

Yes, I was a tough regulator. The tougher I was with companies, the better it was—not only for the public but for the companies. I believe in enforcing the law. And my team at NHTSA would not have allowed such a serious stalling/airbag safety defect to be ignored for 13 years. In fact, I was the first Administrator of NHTSA to require a recall for a stalling defect in the Chrysler Valore in 1978. It was quite a battle. But I knew about the dangers first-hand because my sister-in-law’s vehicle bad stalled on a highway exit and she bad to climb out of the vehicle with her tiny baby and find help. For GM to suggest that stalling is a “customer satisfaction” issue and did not involve safety as they stated yesterday at the Senate GM hearing chaired by Senator McCaskill is ludicrous.

During my four years in office, I met every week with the chief of compliance and reviewed every case and its status when I was administrator. I inherited over 200 old cases from my predecessor, who did not like to bother with enforcement. I hired six young attorneys for one year to clean them up and get as many recalled as possible (the statute of limitations was eight years at that time; now its 10 years). One-year appointments did not count against our maximum number of employees and we were already maxed out.

I also put out “Consumer Alerts” to the public, which were covered by the press, and did endless radio programs, asking the public to inform NHTSA if they had a problem with their vehicles, and asked for specific feedback on particular problems we were investigating so we could get real-time data.
(We didn't have any computers, of course, or the internet!)

We also held auto safety town meetings around the country, which we publicized and for most about 1,000 people attended. Citizens were encouraged to discuss their vehicles, any defects, and what they wanted to see improved in auto safety. We beld nine of them.

I also held meetings with dealers (who are rarely given policy information by the manufacturers (the factory in their terms)). I met with them in groups of about 10 each for a full day. At each one someone spoke out about what a revelation it was to learn about the purpose and importance of the federal safety program. Unfortunately, I thought to do this late in my fourth term and beld only six such meetings. But they were important because the dealers are the political arm of the manufacturers and can be a positive force as well as negative.

I also used NHTSA's subpoena power (the current acting Administrator told the Senate NHTSA did not have subpoena power until his chief counsel corrected him?) to demand information under oath from the companies we were investigating. My first subpoena was sent to Lee Iacocca because Ford had announced a recall but then did nothing for five months. A week after I was sworn in I sent the subpoena and the next day a vice president of Ford was in my office to explain it had designed the wrong part for the fix and bad to start again. Subpoenas are so important because if the respondent lies under oath be/she can go to jail. In controversial safety-defect investigations I did not hesitate to use them.

When Ford designed the correction for the Pinto fuel tank in 1978, I insisted it be crash-tested to see if it worked. I said NHTSA would do the test if Ford did not want to. Ford agreed to conduct the test and, bingo, the vehicle failed to contain the gasoline. The correction had to be redesigned.

When we were investigating the Firestone 500 radial tire I sent a subpoena because Firestone refused to provide the documents we requested. NHTSA sued Firestone and won—the first test of NHTSA's subpoena power. Firestone provided the documents but amusingly provided one box that said "Already reviewed by NHTSA." The attorney in charge of this case was irritated because no one else was assigned to handle the document request so be looked in that box first and, no kidding, it contained all the most damning documents, including that the Board of Directors were involved in the cover-up of the 500 tire defects. It was Firestone's first radial tire and was intended to compete with Michelin. The company decided it could not afford to admit the defect, but initiated a recall of a small number from one plant to satisfy nosy NHTSA investigators. But we caught them.

As a result, the entire top corporate structure was fired including the CEO and the General Counsel. Twenty million tires were involved. By the time they agreed to a full recall in 1978, only eight million remained in use.

Without question my power derived from informing the public. I probably talked to one or more reporters every day. We helped to educate the public about what happens in a crash and bow safety designs can prevent deaths and injuries. We outfitted 10 large Chevrolets with a retrofit air bag designed to inflate slowly to show how they worked (if a crash occurred). We gave one to each NHTSA regional director across the country to use for demonstrations and events. And we produced a "Research Safety Vehicle" produced by a contractor that was designed to crash safely at 50 mph frontal and 40 mph side that was beautiful. It looked like a Porsche with gull-wing doors, and a white plastic skin with blue and red trim. We produced about 20 of them and sent one to a number of countries under a research program in which these governments crash tested them to evaluate their performance. We publicized this vehicle and took one on a 52-city tour (on the back of a truck) to show off at state fairs and on television shows including NBC's Today show. I also took it to Japan to show the Japanese companies who I visited that the USA could make a small very, very, safe car.

We also crash tested hundreds of cars each year and created the New Car Assessment Program (NCAP) to reveal to the public the safety or lack of safety of vehicles by make and model. To synthesize this crash test information we designed a Car Book for the public with the information on all the crash tests. I took it and the car on the Phil Donahue Show and 450,000 people requested copies of the book. The auto companies asked the Secretary of Transportation to quash the program but it was too late. The public loved it. It continues to this day, and has been improved. We got legislation in 2005 passed by Congress to require the crash test results for each make/model to be listed on the federal price sticker so new car buyers can see the information before buying the car. The program has spread internationally and is active in European countries, Japan, Australia, and is now being considered by China and South American countries.

My most difficult battle was in getting air bags designed into new cars. It took 20 years. The first rule was issued in 1971, was revoked by Richard Nixon, was reissued by DOT Secretary and me in 1977, was revoked by Ronald Reagan in 1981, who was overruled by the U.S. Supreme Court in a unanimous decision in 1983; it was reissued by Secretary Elizabeth Dole in 1984 with the proviso that it would be revoked if two-thirds of the population was covered by mandatory seat belt use laws by 1989. We got Willie Brown of California to pass a belt law saying it would be revoked if counted to revoke the air bag rule (taking 10 percent of the national population away from the mix). The two thirds was never reached by 1989 and the courts sustained by Dole rule again auto company attack. Air bags began being installed in passenger cars on the driver side in 1989 models. In 1991 we got legislation enacted requiring air bags in all new vehicles including not only cars but also vans, pickup trucks and SUVs by 1997.

Joan Claybrook was the ideal person to head up NHTSA. She was fair, independent, highly intelligent, and very tough. The automobile industry would be in much better shape today—as would their customers—if Joan had stayed on at NHTSA. I wish I had the pages to allow Joan to share more of her stories. It’s most important for folks to understand the critical role of regulatory agencies like NHTSA. We should demand higher standards at this agency, and that’s because our lives are at stake. In closing, we need more folks such as Joan Claybrook in charge of our regulatory agencies.
Automobile Recalls Have Already Broken A Record

Most folks are shocked when they learn that with six months left in 2014, automakers have already recalled more vehicles in the U.S. than in any other year on record. According to the National Highway Traffic Safety Administration (NHTSA), in the first six months of this year there have already been more than 39 million cars recalled. That is one out of every 10 cars on the road, and the number of recalls tops the 30.8 million record set in 2004. This comes from the most recent preliminary data found on NHTSA’s website.

Our readers shouldn’t be surprised to read that General Motors accounts for about two-thirds of the total, having already recalled more than 29 million vehicles this year. The total in the U.S. for all companies is expected to rise as soon as Japan’s three biggest carmakers finish an evaluation of their worldwide fleets for faulty airbag inflators made by Takata Corp.

Through June, about 8.1 million new vehicles had been sold in the U.S. Historically, recalls range from 10 million to 20 million U.S. vehicles each year, according to the NHTSA database. There were slightly fewer than 22 million last year and 16.4 million in 2012. Besides 2004, there’s been only one other year in which the tally passed 30 million, in 1981. The official 2014 numbers from NHTSA won’t be released until next year.

This year’s record run largely began when GM began calling back 2.59 million small cars in February to fix the faulty ignition switch that has been linked to as many as 300 deaths in crashes. The fact that GM knew of switch failures for more than a decade before acting has resulted in congressional investigations, a $35 million civil fine, and a Department of Justice criminal probe. GM claims to have started a comprehensive safety review of all its cars. While that move—if totally true—is very late in coming, it all started with the Melton case in a Georgia state court.

GM, the largest U.S. automaker, has recalled over 29 million vehicles this year, with 25.7 million vehicles being recalled in the U.S. The recalls were for a variety of fixes ranging from ignitions to door wiring to seatbelt retractors. It’s very easy to figure out that safety hasn’t been a top priority for the automaker. In fact, GM’s recalls have already eclipsed Ford Motor Co.’s previous single-year record for a company of 23.5 million in 2001. With 64.6 million cars and trucks on U.S. roads, GM has already called back the equivalent of 40 percent of its vehicles.

Source: Claims Journal

Eight Car Makers Join In The Recall Of Exploding Airbags

There can be little doubt that airbags, when designed correctly, will save lives. According to the National Highway and Traffic Safety Administration (NHTSA), airbags have saved approximately 35,000 lives since 1987. However, when airbags are defectively designed, they create a high risk of severe injury and death to vehicle occupants. As of 2009, defective airbags were responsible for 296 deaths, 59 life threatening injuries, and countless severe injuries. Injury and death due to defective airbags are caused when one of the following occurs:

- The airbag inflates too quickly and aggressively, violently hitting the occupant in the face; or
- The airbag ruptures before inflation, spewing pieces of metal into the occupant’s body.

Last year, Takata, a major airbag manufacturer for Honda and Nissan, ordered the largest airbag-related recall in history due to a string of injuries and two deaths caused from its highly explosive airbags. Takata has since admitted that it did not properly store the chemicals used to inflate the airbags, defectively manufactured the explosives used for inflation, and did not adequately maintain quality-control records.

NHTSA has opened an investigation into the issue and says that it knows of six incidents of ruptured bags and three injuries in high-humidity Florida and Puerto Rico. A major factor in the size and expansion of the recalls has been admitted. Bad record-keeping by Takata has made it difficult to identify the vehicles that might have the suspect inflators. As of mid-July, eight car manufacturers including Honda, Mazda, Nissan, Toyota, BMW, Chrysler, Ford, and Subaru had joined in the recall of these defective Takata airbags.

In the latest actions:

- Honda recalled 1.02 million vehicles in North America and 2.05 million worldwide. They were built from 2000 through 2005 and include some models of Civic, CR-V, Odyssey and Element. With this expansion, air bag recalls have affected nearly 4 million of the company’s older vehicles in North America.
- Nissan recalled 755,000 vehicles worldwide built from 2001 through 2003, with about a quarter-million Pathfinder, Cube and Infiniti FX35 models in North America.
- Mazda recalled nearly 160,000 vehicles made from 2002 through 2004, with

about 15,000 in North America, including RX-8 and early Mazda6 sedans.

Regional recalls in the U.S. by Honda, Nissan, Mazda, Toyota, BMW, Ford and Chrysler of certain vehicles in humid climates. NHTSA estimates that 1.5 million vehicles could be affected—the totals and lists of vehicles still were being compiled.

Subaru is recalling nearly 8,600 Subaru Legacy cars, Outback wagons, Baja crossovers, and Impreza cars.

Since 2008, more than 10 million cars containing the defective Takata airbags have been recalled. Unfortunately, it’s highly probable that we are going to see many more recalls in the future before this problem is resolved once and for all.

Source: USA Today and Automotive News

Drug Manufacturers Fraud Litigation

J&J Pays Oregon $4 Million To Settle Hip Implant Marketing Claims

DePuy Orthopaedics Inc., a Johnson & Johnson subsidiary, has agreed to pay $4 million to the state of Oregon to settle a lawsuit filed by the state. It was alleged that DePuy failed to disclose to physicians and patients that its hip implants had a high rate of failure. According to the Oregon Department of Justice, this is the first settlement of its kind. The settlement by DePuy with Oregon, announced last month, marks the first time DePuy has settled a government action alleging it made false or unsupported claims about its ASR XL metal-on-metal artificial hip devices. As we have previously reported, DePuy has previously settled thousands of suits over the ASR XL implant, which was recalled in 2010. DePuy still faces thousands of lawsuits in both federal and state courts.

It has been contended that DePuy repeatedly violated the Unfair Trade Practices Act by making claims about the ASR XL that were false, unsubstantiated or contradicted by evidence. Among other things, the state contended that DePuy falsely represented to Oregon physicians and patients that the ASR XL worked properly, when evidence indicated the device was failing at unusually high rates. In addition to the $4 million payment to the state, DePuy is prohibited under the settlement agreement from...
making any false, misleading or deceptive representations when marketing or promoting its hip replacement products.

In November, Johnson & Johnson agreed to pay $2.5 billion to settle thousands of lawsuits brought by patients who needed to have their faulty ASR XL implants replaced. Under that agreement, which was finalized in May, each of the 8,000 patients expected to participate in the settlement would receive a base award of up to $250,000, with a supplemental award possible for patients who suffered extraordinary injuries as a result of the revisionary surgery.

It should be noted, however, that the $2.5 billion settlement did not apply to Plaintiffs who did not have their implants replaced on or prior to Aug. 31. If you need additional information on the hip replacement litigation, including the Depuy cases, contact Navan Ward, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at Navan.Ward@beasleyallen.com. Navan has been heavily involved in this litigation.

Source: Law360.com

**Ranbaxy Pays $2.3 Million To Settle Generic Safety Suit**

The Oregon Department of Justice has also settled a case with Ranbaxy Laboratories Ltd. and two affiliated American companies. Pursuant to the settlement, $2.3 million will be paid to the state. It was contended that Ranbaxy, a drug manufacturer based in India, sold generic prescription drugs in Oregon that were not safe for consumers. Ranbaxy’s conduct came to the attention of Oregon officials in 2013. A whistleblower case in federal court revealed that the company had been shipping substandard generic drugs to the United States, some of which were distributed in Oregon. While that case settled for $500 million, the money allocated to Oregon’s Medicaid program did not cover the full cost of drugs purchased from Ranbaxy.

Pursuant to the settlement in the state court case, all of the Oregon state agencies that purchased Ranbaxy drugs will be reimbursed 100 percent of their costs. By failing to comply with safe manufacturing practices required by the U.S. Food and Drug Administration (FDA), Ranbaxy violated Oregon consumer protection and pharmacy laws.

The Ranbaxy-manufactured drugs in question include amoxicillin, a widely prescribed antibiotic; clavulanate potassium, used in combination with antibiotics to treat drug-resistant bacteria; and sotret, an acne medication. Medications manufactured by Ranbaxy have been subject to safety concerns outside of Oregon. In January, the FDA prohibited Ranbaxy’s site in Toansa, India, from manufacturing active pharmaceutical ingredients for FDA-regulated products. That came after officials uncovered “significant” violations of U.S.-promulgated manufacturing practices meant to ensure drug safety.

Source: Law360.com

**Nursing Homes Are Said To Overmedicate Patients**

A combination of chronically understaffed facilities, inadequately trained medical personnel and aggressive marketing by Big Pharma has created a deadly danger for elderly residents in many nursing homes. Drugmakers are being administered medications, including dangerous antipsychotic drugs, to control their behavior. Rather than spend time with patients to understand why they may be aggressive or unhappy, these facilities are encouraged to subdue patients with drugs.

Kathi Levine, a California resident, tragically discovered this practice first-hand, when her mother, Patricia Thomas, 79, entered the Ventura Convalescent Hospital in Ventura, to receive physical therapy for a broken pelvis. Although her mother had Alzheimer’s, Ms. Levine told AARP Bulletin that when her mother went into the nursing home she could dress herself, feed herself, walk on her own, and have a conversation with her daughter. Mrs. Thomas was in the nursing home for 18 days. When Ms. Levine picked her up, she says her mother could not speak, she was withdrawn and slumped in a wheelchair. Within weeks of leaving the facility, Mrs. Thomas died.

Ms. Levine discovered her mother had been administered a long list of various drugs, including illegally administered antipsychotics. She told AARP Bulletin that she believes her “mother died because profit and greed were more important than people.” In May, lawyers working on behalf of Ms. Levine, along with lawyers from the AARP Foundation, agreed to an unprecedented class-action settlement against the facility for “using dangerous drugs without the consent of residents or family members.” It was said to be the first case of its kind in the country.

It has been reported that as many as one in five patients in nursing homes are given antipsychotic drugs, which are both unnecessary and dangerous for older patients. Pharmaceutical companies and drug manufacturers actively promoted drugs such as the antipsychotics Risperdal and Zyprexa for elderly patients, when these uses were not approved by the U.S. Food and Drug Administration (FDA). In fact, these drugs are recognized as dangerous for this elderly population, actually doubling their risk of death.

Source: AARP Bulletin, RightingInjustice.com

VI. PURELY POLITICAL NEWS & VIEWS

**The July 15 Vote In Alabama**

July 15 was a rather sad day for Alabama. That’s because the run-off elections in Alabama drew only 8 percent of the voters. That was a costly exercise and one that should get the attention of all Alabamians. How can we possibly justify having less than 10 percent of our people making important decisions that affect all Alabama’s citizens? While there were only three statewide elections on the ballot, an 8 percent turnout is
still a sad state of affairs. With the general election being only a few months away, more will be written next month on the importance of voting.

**Jeb Bush IS Alabama’s Early Favorite For 2016**

According to a recent poll, Jeb Bush, the former Florida governor who just happens to be brother of George W. Bush, leads the field of potential candidates for the Republican nomination for President in Alabama. Gov. Bush got the support of almost 20 percent of the poll responders. Kentucky Senator Rand Paul was second with 10.5 percent, followed by Dr. Ben Carson (a Maryland physician) with 12.6 percent and New Jersey Governor Chris Christie with 8.8 percent. The man I hope runs, because of the entertainment value, Governor Rick Perry of Texas, received 7.2 percent. He was followed by Senator Ted Cruz with 5.6 percent. The rest of the votes went to former Senator Rick Santorum, Louisiana Governor Bobby Jindal, and Wisconsin Governor Scott Walker.

I am not at all surprised that Jeb Bush polls well in Alabama. I believe that he will be a strong national candidate if he decides to run. I have always believed that this brother was the best “politician” in the family. But that assessment doesn’t include the “Bush women.” Clearly, Barbara Bush was the best of the lot, followed closely by Laura Bush.

This is the first time a GOP candidate has reached 20 percent in a crowded field and the first time a Zogby poll has shown someone emerging a bit from the pack. That could prove to be very significant. Obviously, it is too early to predict outcomes or draw lasting conclusions, but Sen. Paul appears to do well among all sub-groups.

On the Democratic side, the Zogby poll of likely Democratic primary voters shows Hillary Clinton dominating the pack with 52 percent support. Her closest challengers are Vice President Joe Biden with 8 percent and Massachusetts Senator Elizabeth Warren with 7 percent. Others posting numbers are Maryland Governor Martin O’Malley and former Montana Governor Brian Schweitzer with 4 percent, and former Virginia Senator Jim Webb with 3 percent.

It will be most interesting to see what happens in the coming months. While I am pretty sure that the Democratic nominee will be named “Clinton,” I am not so sure about who the GOP nominee will be. I once thought it would be Gov. Christie, but now it appears that either Sen. Paul or Gov. Bush will likely be the nominee. But remember, we are in mid-year of 2014 and the election is not until 2016. Things can change overnight in politics. If you doubt that, check with the Christie campaign.

**National Polls Show Different Results**

There have been a number of polls run recently targeting voters in states like Iowa and New Hampshire. In one poll—nationwide in scope—Sen. Rand Paul was the winner. The Zogby Analytics poll of likely Republican primary voters in 2016 shows Sen. Paul starting to build a lead over better known—and more “establishment”—GOP figures. The poll of likely and eligible voters in GOP presidential primaries was conducted in late June.

In the poll, the junior Senator from Kentucky polls 20 percent, followed by “establishment” candidates New Jersey Governor Chris Christie and former Florida Governor Jeb Bush with 13 percent each. In fourth place was Wisconsin Governor Scott Walker with 8 percent, then Florida Senator Marco Rubio 7 percent, Louisiana Governor Bobby Jindahl 4 percent, and New Mexico Governor Susana Martinez, Ohio Governor John Kasich, and South Carolina Governor Nikki Haley all with 1 percent each.

**U.S. Senate Unanimously Confirms Judge Carnes To The 11th Circuit**

The U.S. Senate has unanimously confirmed U.S. District Judge Julie E. Carnes to the Eleventh Circuit Court of Appeals. This is the second appointment lawmakers have made to the busy appeals court this year. Senators voted 94-0 to confirm Judge Carnes, elevating her to the circuit court role after more than two decades on the federal bench in the Northern District of Georgia. The vote came after she won the support of state’s senators—Republicans Saxby Chambliss and Johnny Isakson—on the Senate floor.

Judge Carnes, who was chief judge of the Northern District before her confirmation, was selected for the appeals court bench by President Obama in December. Before taking on a judicial role in 1992, Judge Carnes had already put together a distinguished career in public service.

With her confirmation, Judge Carnes becomes the 10th circuit judge confirmed by the Senate this year, and the second judge confirmed to the Eleventh Circuit. Former Florida federal judge Robin S. Rosenbaum won confirmation to the appeals court in May. Senators have also confirmed nominees to the First, Third, Fifth, Ninth, Tenth and D.C. Circuits. There are still two vacancies on the 11th Circuit. Hopefully, they will be filled very soon.

**Baton Rouge Lawyer Confirmed By U.S. Senate**

The U.S. Senate has confirmed John W. deGravelles as a federal judge in Louisiana. A partner at the Baton Rouge firm of deGravelles, Palmintier, Holthaus & Frugé, deGravelles specializes in civil litigation representing individuals and businesses. He has practiced extensively in both state and federal court. He serves as an adjunct faculty member at the LSU Paul M. Hebert Law Center and Tulane University Law School’s Summer Program in Rhodes, Greece. He was honored as a Fulbright Scholar for his work on international maritime education.

deGravelles will serve on the bench for the Middle District of Louisiana, comprising the parishes of Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, Pointe Coupee, St. Helena, West Baton Rouge and West Feliciana. U.S. Sen. Mary Landrieu, D-La., recommended deGravelles to President Obama for nomination to the judgeship in December. It was significant that deGravelles received tremendous support from Baton Rouge-area elected officials, legal educators and lawyers.

**American Corporations Are Becoming Foreign Citizens**

Tax rates vary from person to person depending on where you live and your annual income. The same variations exist in the world of corporate taxes. On paper, the United States has the highest overall tax rate of any of the world’s developed economies. The federal rate is 35 percent, but corporations are also subject to state and sometimes local taxes depending on where they are incorporated. Most companies, however, don’t actually pay the 35 percent corporate tax rate because of certain tax breaks. In fact, in 2012, the effective tax rate was just
12.1 percent, the lowest it has been since World War I.

That 35 percent tax rate is still daunting, and with tax breaks also offered in foreign countries, many corporations are finding ways to change their citizenship. While the process is called an “inversion,” it’s really just a complicated tax evasion scheme. This is how an inversion works: an American corporation buys a smaller foreign rival from a low-tax country. Instead of the larger, American company remaining as the parent, the smaller company becomes the parent corporation. The newly incorporated corporation \( \text{“inverted company”}\) is a foreign company even though it is actually headquartered in America and controlled by Americans.

As a newly created foreign company, the inverted company is no longer subject to American tax rates. Instead, it is subject to the lower rate of that foreign country. According to the Congressional Research Service, 76 U.S. corporations have shifted their tax domiciles out of the United States since 1983. Forty-seven have occurred in just the last decade and many more are currently in the works. For example, Medtronic Inc., a major U.S. medical manufacturer, is looking to buy Covidien Plc, which is based in Ireland. Other examples of “Top American corporate tax avoiders,” according to Fortune magazine, include Perrigo PLC, Endo International, and Actavis PLC.

According to the Joint Committee on Taxation, inversions will create a $19.5 billion loss in taxes during the next 10 years. The big question, then, is how to fix this problem. Congress can address the issue in two ways: reduce the overall corporate tax rate, or make it more difficult for American-born corporations to switch their citizenship. There has been some back and forth debate over the taxation rate for the past few years, with no actual progress. One major factor to consider in the debate is payroll taxes. There has been a marked change in where federal revenues come from in the last 60 years. Between 1952 and today, payroll taxes increased from 9.7 percent of payrolls to 15.3 percent. There has been a marked increase in payroll taxes since 1983. Forty-seven have occurred in just the last decade and many more are currently in the works. For example, Medtronic Inc., a major U.S. medical manufacturer, is looking to buy Covidien Plc, which is based in Ireland. Other examples of “Top American corporate tax avoiders,” according to Fortune magazine, include Perrigo PLC, Endo International, and Actavis PLC.

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IX. THE CORPORATE WORLD

Citigroup Settlement Of Mortgage Fraud Reaffirms The “Too Big to Jail” Policy

Attorney General Eric Holder announced a settlement last month valued at $7 billion with Citigroup. According to Attorney General Holder, the settlement was “appropriate given the strength of the evidence of the wrongdoing committed by Citi.” He says the civil penalty was a record for this type case. Under the agreement, Citigroup will pay $4.5 billion in cash and an additional $2.5 billion in “consumer relief.” The $2.5 billion is supposed to go to help consumers struggling with mortgages and other problems from the 2007-2009 financial crisis. Attorney General Holder said in a statement:

Despite the fact that Citigroup learned of serious and widespread defects among the increasingly risky loans they were securitizing, the bank and its employees concealed these defects. The bank’s conduct was egregious. And under terms of this settlement, the bank has admitted to its misdeeds in great detail.

The bank has been under investigation by federal authorities for faulty mortgage securitizations that fueled the housing bubble a decade ago. In a review of every residential mortgage backed security issued or underwritten by Citigroup in 2006 and 2007, it was found “that the misconduct in Citigroup’s deals devastated the nation and the world’s economies, touching everyone,” according to Loretta Lynch, the U.S Attorney in New York’s Eastern District.

The settlement stems from the sale of toxic securitizations that fueled the housing boom and bust that triggered the Great Recession at the end of 2007. Banks, including Citigroup, minimized the risks of subprime mortgages when packaging and selling them to mutual funds, investment trusts and pension funds, as well as other banks and investors. The securitizations contained standard residential mortgages that were publicly promoted as relatively safe investments. Then the housing market collapsed in 2006 and 2007 and, as a result, investors suffered billions of dollars in losses. Those losses triggered a financial crisis that pushed the economy into the worst recession since the 1930s.

Several public advocacy groups have criticized the settlement, calling it a “sweetheart deal,” and they have let it be known they are not satisfied with these settlements. Lisa Gilbert, director of Public Citizen’s Congress Watch division, had this to say about the settlement:

The Department of Justice’s latest settlement with Citigroup over its massive mortgage fraud reemphasizes the backroom nature of these deals. By Attorney General Eric Holder’s own assessment, Citi’s actions were “egregious.” Yet no individuals are being held to account, the bank is not being charged with any criminal activity, the corporation faces no review of its bank charter and business continues in its offices spanning 180 countries. Attorney General Holder says that the settlement doesn’t absolve Citi or Citi officials of possible criminal charges. But the track record of the Depart—

BeasleyAllen.com
How to make corporate sinners get religion

July 8, 2014

Business is not feeling a lot of love these days. Wall Street greed, bank bailouts and anger driven by wealth concentration are driving populist anger from both the left and right. Three of the business lobby’s top policy goals—overhauling immigration, funding highways and renewing the Export-Import Bank— are stalled on Capitol Hill.

Corporate leaders are right to bemoan the nation’s dysfunctional politics. But they also need to look in the mirror. Much of their poor standing is the result of their own misbehavior.

To review the past decade is to see a remarkable string of fraud, self-dealing, market manipulation, negligent manufacturing, money laundering, price fixing, price gouging and tax evasion—much, but not all, of it focused on the financial sector.

Topping the list, of course, are the wildly irresponsible subprime and “no-docs” loans—and the many lies that went into selling them in bulk to investors—that nearly brought down the U.S. economy in 2008.

But deadlines of the past two months show even that near-death experience, and subsequent reforms, haven’t exactly halted the cavalcade of corporate wrongdoing.

In May, banking giant Credit Suisse agreed to pay $2.6 billion in penalties for helping wealthy American clients evade U.S. taxes.

In June, BNP Paribas agreed to pay nearly $9 billion and plead guilty to criminal charges for violating U.S. financial sanctions by processing billions of dollars in financial transactions for rogue nations such as Iran and Sudan.

Beyond the banks, General Motors admitted dragging its feet for a decade in recalling vehicles with a potentially deadly ignition switch problem, and T-Mobile was accused of overbilling its customers to the tune of hundreds of millions of dollars.

Most of these cases, including the one against BNP Paribas, have been settled without criminal charges against individual corporate officials, inevitably inviting both further abuse and public speculation that the corporations control the government rather than the other way around.

The Justice Department has reinforced that impression by repeatedly promising to hold individuals accountable, then largely failing to do so.

“I think people need to just be a little patient,” Attorney General Eric Holder said earlier this year. But six years after the financial collapse, they’ve been more than patient. As Lanny Breuer, the former head of the Justice Department’s criminal division, once put it, “The strongest deterrent against corporate crime is the prospect of prison time for individual employees.” That deterrent is sorely missing. As for the aggrieved business community, it needs a hard look at its ethics. Actions don’t have to be criminal to be wrong—a principle that seems to have been lost not just on Wall Street but also at GM and a host of other companies that have been caught abusing their customers. If business groups want to repair some of their reputational loss, they need to look first to themselves.

While all corporate officers aren’t involved in activities like those mentioned above, there are a good number who clearly have been. I am convinced that weak regulatory agencies that are under-funded and under-staffed are a large part of the problem. We have seen less than adequate regulation of corporate America and that has allowed the companies to do things without any real fear of being caught. And, if they are caught, a fine is paid, and nothing really changes. It’s time for shareholders in Corporate America to start getting involved in bringing about change in the board room of their companies.

Pilot Flying J to Pay $92 Million in Fines Over Fuel Rebate Scheme

Pilot Flying J, a truck stop chain, has agreed to pay $92 million in fines for a scheme to cheat truck drivers out of agreed-upon diesel fuel rebates. In an agreement with the U.S. Attorney’s Office for the Eastern District of Tennessee, Pilot Travel Centers LLC, which does business as “Pilot Flying J,” took responsibility for the scheme run by its employees. The scheme cost the company’s customers more than $56 million. This agreement comes after 10 Pilot Flying J employees pleaded guilty to involvement in the scheme. Incidentally, the company is controlled by Cleveland Browns owner...
Jimmy Haslam. The details of the enforcement agreement entered were released on July 14.

Pilot Flying J, one of the largest trucker diesel suppliers in the U.S., offered rebates and discount programs in order to encourage loyalty among its customers. But these programs were complex. The discounts offered by the company varied among its numerous truck stops, making it very difficult for customers to know whether they were getting their agreed-upon discounts. The U.S. Attorney’s office said the company, in some instances, taught its sales staff how to reduce the rebates in order to make some accounts more profitable.

It appears that both Haslam and Pilot President Mark Hazelwood knew that sales staff were withholding rebates from some of the company’s less-sophisticated customers. Knoxville-based Pilot compensated some of the affected customers in the wake of the scandal. In November, a federal judge approved Pilot’s $85 million settlement with a class of 4,500 customers in a lawsuit filed in an Arkansas federal court over the fuel rebates. Several Plaintiffs opted out of the settlement. In April, the U.S. Judicial Panel on Multidistrict Litigation consolidated seven suits and assigned the case to the U.S. District Court for the Eastern District of Kentucky.

Source: Law360.com

**FedEx Indicted On Charges Of Aiding Illegal Online Pharmacies**

A San Francisco federal judge has indicted FedEx Corp. on charges that it helped illegal online pharmacies ship Xanax, Valium, Ambien and other drugs without prescriptions despite repeated warnings from regulators. This practice by FedEx allowed it to gross at least $820 million over a decade according to reports. The indictment charged the shipping company on 15 counts relating to trafficking controlled substances and misbranded drugs. FedEx could be forced to return its gross proceeds and be fined up to twice that amount, according to prosecutors.

Prosecutors said FedEx dealt with two major online pharmacies, the Chhabra-Smoley Organization and Superior Drugs, between 2000 and 2010 and knowingly aided illegal shipments. FedEx was told as early as 2004 by law enforcement, members of Congress and the U.S. Food and Drug Administration (FDA) that the pharmacies were using the shipping giant to violate federal and state law.

It appears FedEx knew exactly what it was doing. The indictment said that FedEx set up a separate credit check system just for online pharmacies after it was repeatedly unable to collect unpaid bills from pharmacies that were shut down by law enforcement. Prosecutors said, because of the constant risk that the pharmacies would go out of business, FedEx made sure pharmacy accounts were not tied to specific salespeople in order to avoid harming sales targets. The indictment said further:

*FedEx departed from its usual business practices to participate in and facilitate [the organizations'] unlawful sale of controlled substances.*

Another company, United Parcel Service Inc. (UPS) agreed last year to forfeit $40 million it had received from illegal online pharmacies as part of a deal to avoid criminal charges. UPS also said it would bolster its compliance policy to avoid shipping packages for illegal online pharmacies.

FedEx was to appear in court on July 29. It will be interesting to see what happened. Not only does it appear that the company violated the law, but it allowed the online pharmacies to put folks at risk for adverse health events since it appears no doctors were involved. I don’t recommend buying drugs from online pharmacies for that very reason.

Source: Law360.com

**$100 Million In Settlements Approval In Metal Manipulation Case**

A New York federal judge has approved settlements by hedge fund Moore Capital Management LP and Joseph Welsh, a former MF Global Inc. broker, totaling nearly $100 million. The settlement was in a class action lawsuit filed in a multi-district litigation that was consolidated in the Eastern District of Arkansas.

The settlement was in a class action by hedge fund Moore totaling $57.4 million and two settlements by Joseph Welsh totaling $42 million.

Judge Paul A. Crotty approved the settlement on June 23, 2014 after the parties in the case agreed to a proposed settlement. The parties in the case are: "Moore Capital Management, LP, Joseph Welsh, and the Trustees of the MF Global Holding LLC Liquidating Trust. The Plaintiffs are 1,500 customers of MF Global in the United States." In addition, the settlement includes a $9.4 million payment by Welsh to other customers of MF Global who did not opt out of the class.

The settlement will settle claims against Moore and Welsh for violations of federal securities law. Under the settlement, Moore will pay $48.4 million to a class of Plaintiffs that bought palladium futures contracts between June 2006 and April 2010, and will pay $9.4 million to a class of Plaintiffs that bought physical platinum or palladium during the same time period. Welsh’s insurers have denied coverage on his claims.

Source: Law360.com

**OMNICARE SETTLES WHISTLEBLOWER CLAIMS FOR $124 MILLION**

The nation’s largest provider of pharmaceuticals and pharmacy services to nursing homes will pay $124.24 million to resolve allegations that it paid kickbacks to secure contracts to supply drugs to nursing homes with Medicare and Medicaid beneficiaries. "Omnicare provided improper discounts in return for the opportunity to provide medication to Medicare and Medicaid beneficiaries,” said Steven M. Dettelbach, United States Attorney for the Northern District of Ohio. “Nursing homes should select their pharmacy provider based on the best quality, service and cost to the residents, not based on improper discounts to the nursing facility.” The Anti-Kickback Statute prohibits

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offering, paying, soliciting or receiving remuneration to induce referrals of items or services covered by federally funded programs such as Medicare and Medicaid.

The settlement resolves allegations brought in two lawsuits filed by whistleblowers under the False Claims Act. The lawsuits alleged that Omnicare submitted false claims by entering into below-cost contracts to supply prescription medication and other pharmaceutical drugs to skilled nursing facilities to induce the facilities to select Omnicare as their pharmacy provider. The facilities were participating providers under agreements with Medicare and Medicaid. In that capacity, Omnicare submitted claims for reimbursement to Medicare and Medicaid for drugs Omnicare supplied to the facilities.

Since January 2009, the Justice Department has recovered more than $13.9 billion in cases involving fraud against federal health care programs. If you need more information on the whistleblower litigation contact Lance Gould, Archie Grubb or Andrew Brashier, lawyers in our Consumer Fraud Section, at 800-898-2034 or by email at Lance.Gould@beasleyallen.com, Archie.Grubb@beasleyallen.com or Andrew.Brashier@beasleyallen.com. Each of these lawyers handles whistleblower litigation for the firm.

**LB&B Associates Sued In Whistleblower Lawsuits**

Two separate whistleblower lawsuits have been filed against LB&B Associates, Inc., a North Carolina firm. It’s contended in these suits that the company lied to get into two Small Business Administration (SBA) programs to obtain lucrative government contracts. LB&B Associates describes itself on its website as a “diversified services company” doing unspecified work for government agencies, commercial entities, institutions and businesses. While the company presents itself as a woman-owned, minority business, the two lawsuits—one filed by former employees and the other by the federal government—claim that was not exactly the case. It is claimed that the company lied to get into two Small Business Administration programs for minority businesses. These cases are described as:

- In the first case the Plaintiffs claim LB&B and its officers lied to get certified under the SBA’s Section 8(a) program, a business development program for small businesses owned by people who are socially and economically disadvantaged.

- It’s claimed that the same pattern of dishonesty occurred when the company applied to the SBA’s Mentor-Protégé program, which allows a non-Section 8(a) company to form a joint venture with a Section 8(a)-eligible company. The program is designed to encourage an approved mentor, which is not a Section 8(a) concern, to provide managerial, financial, and technical assistance to improve a protégé’s ability to compete for government contracts.

- Each of the cases would be, among other things, violations of the federal False Claims Act.

On April 14, 2011, the federal government filed a notice of election to intervene in part, electing to intervene in the Plaintiffs’ claims only insofar as they relate to the LB&B defendants’ participation in the Section 8(a) program, but not the Mentor-Protégé program. The government filed its complaint in intervention on Aug. 19, 2011. Its complaint asserts two additional causes of action against LB&B: for common law negligent misrepresentation and fraud.

Source: Dan McCue

**A Whistleblower Lawsuit Against A Government Contractor Will Proceed**

A whistleblower lawsuit against Computer Sciences Corp., alleging that the company deceived the U.S. government for a contract it was supposed to share with small businesses, will go forward. The whistleblower, Tien Tran, who is the relator of the False Claims Act lawsuit, alleges that his small business Inforan was manipulated in the scheme by Computer Sciences Corp., the director contractor, and another large business, Modis Inc. The $200 million deal with Computer Sciences Corp. designated it as the prime contractor to perform information technology work for the U.S. Citizenship and Immigration Service.

However, to qualify, the contractor had to subcontract certain of the work to qualified small businesses. According to Tran, Computer Sciences wanted to appear like it was subcontracting to small businesses while it was actually giving the work to Modis, a larger company it had a relationship with. The so-called pass-through scheme involved alleged coordination with a small IT firm like Sagent Partners, which in turn subbed out work to Modis. U.S. District Judge Ketanji Jackson has dismissed the claims against Sagent.

Source: Associated Press

**Congressional Approvals Are Very Low**

I understand that “some” members of Congress pay a great deal of attention to poll results to formulate their stands on most issues these days. But I have to wonder if those members worry too much about their own “negative numbers” in all of the recently run polls. Perhaps they should be really concerned about the results of a recent Gallup poll. With only 15 percent of the American people approving of the way Congress is doing its job, it’s pretty obvious that the American people want to see improvements.

The Gallup poll taken last month shows about one in five (22 percent) Americans want to start over entirely when it comes to Congress. The poll indicated that a significant segment of the population says all members should be “fired or replaced.” One in seven said the solution to Congressional inaction is “make members accountable to people, not their own agenda.” The third segment of people—14 percent—want more bipartisan cooperation in Congress.

A significant number—11 percent—are in favor of enacting term limits. Other suggestions including regulating campaign finance laws, electing more Democrats and, on the other side of the aisle, getting rid of President Obama. Actually, that number was only 1 percent, which is sort of surprising.

Putting the poll results aside, I feel reasonably sure that most people are fed up with the inaction in the halls of Congress. I also believe that they are sick and tired of the petty political bickering that consumes all too much of the legislators’ time. In fact with the approval rating of Congress being no higher than 15 percent in all of the polls, with more than 80 percent disapproving of the members’ performance, some of the folks the voters send to Washington might need to start listening to the people for a change.

**The Hide No Harm Act Is Badly Needed**

Two U.S. senators have filed a bill prompted by the massive General Motors Co. (GM) recalls for defective ignition switches that would make it a crime for corporate officers to conceal dangers posed by their products. The proposal by Senators Richard Blumenthal of Connecticut and Bob Casey of Pennsylvania calls for up to five years in
prison and fines for officers who know their products could cause death or injury to consumers or workers and hide that information. Senator Blumenthal said at a news conference that, “Corporate concealment can kill, and corporate officers who engage in concealment must be held accountable.” I totally agree with the Senator.

Public Citizen, the consumer advocacy group, backs this legislation and is pushing hard for its passage. Robert Weissman, President of Public Citizen, along with Amanda Fleming, are taking the lead on this project. They should be commended for their efforts. Amanda, who serves as Director of the Civil Justice Project at Public Citizen, works very hard to protect consumers. This legislation is badly needed. If you agree, contact your Senators and House members and let them know how you feel.

Source: Reuters

XII.
PRODUCT LIABILITY UPDATE

A DANGER IN YOUR HOME IS HIDING IN PLAIN SIGHT

Lawyers in our firm recently settled an Alabama lawsuit involving the failure of a smoke detector in a house fire that occurred in 2011. Three young children, 4-year-old twins and a 1-year-old girl, died during the fire as a result of inhaling toxic smoke, chemicals and carbon monoxide. The claim was brought against Walter Kidde and United Technologies Corporation, among others, as a result of an ionization smoke detector in the house failing to alarm. Greg Allen and LaBarron Boone from our firm, along with Shane Seaborn and Myron Penn, two very good lawyers with offices in Union Springs and Clayton, represented the family in this important case. They can tell you that any homeowner who has an ionization smoke detector—without more—has a dangerous and hazardous condition in his or her home. Unfortunately, most homeowners don’t know about the problem.

Lawyers in our firm have handled cases of this sort in the past and will continue to handle them in the future. Smoke detector manufacturers have known for more than 30 years that a standalone ionization smoke detector is not adequate to protect a home involving a slow-growth or slow-smoldering fire. Proper testing reveals that ionization smoke detectors do not even detect smoke. They detect submicron particles, which may not be produced in sufficient quantity to activate an ionization smoke detector. Smoldering fires tend to put off larger and cooler particles that may not set off an ionization detector even if the particles reach the detection chamber.

Ionization detectors are also dangerous because they lull people into a false sense of security. An ionization detector is often the detector that goes off when someone opens an oven door or burns toast. In such cases, there may be no visible smoke whatsoever. The sad truth is that folks who have these types of detectors assume that if their detector sounds in the absence of smoke, that it would certainly go off in a fire. That is a terrible and highly dangerous misconception.

Another problem with the ionization design is that a person who has a battery operated detector may actually take the battery out to prevent nuisance alarms. This obviously can result in a dangerous and hazardous condition. The detector housings are made out of plastic so that when the fire does flame up and spread, the evidence is destroyed. The detector melts and burns. It may be impossible to determine the manufacturer of the detector or even whether there was a detector actually in the home.

There is an alternative technology available that makes the home much safer from smoldering fires. That’s the photoelectric design, which does sense the presence of smoke in a smoldering fire. This technology has been around for years and has proven to be effective. On the other hand, on the slow smoldering fire, the ionization detector may delay from 30 minutes to an hour or it may never sound.

Fortunately, there are concerned safety advocates throughout the world who have dedicated their lives to removing these defective smoke detectors from the market. Adrian Butler, David Isaac, and Dean Dennis, three of the world's leading fire safety advocates, recently visited our firm in Montgomery, Ala. These three men met with our lawyers to further educate them on fire safety. They participated in an open forum on Beasley Allen Shareholder LaBarron Boone's radio talk show, “The Law and You.” I will give you some information on each of these men:

• Adrian Butler is an Australian consumer advocate who was once in the business of selling smoke detectors. For 15 years, Mr. Butler has worked tirelessly to remove ionization alarms from every home by bringing down the manufacturers and educating the public. Mr. Butler noted that at least 62 people have died in Alabama this year due to defective ionization alarms. But what is so frustrating for Mr. Butler is the fact that the fire industry has known that ionization alarms do not adequately protect consumers for decades. Mr. Butler believes that if consumer groups will get involved, by working together they can help bring an end to the needless fire deaths due to defective ionization alarms. Our law firm is dedicated to helping bring this about.

• David Isaac is a former employee of one of the largest smoke alarm companies in the world, United Technologies Corporation. This company still sells ionization smoke alarms today despite Mr. Isaac’s clear warnings to the company that the ionization alarm is defective. Mr. Isaac noted in the radio show that an ionization alarm is not really a smoke alarm because it does not detect smoke. In fact, the ionization alarm’s probability of activating in a house fire is about 1 percent. When asked why manufacturers continue to sell alarms that are known to be defective, Mr. Isaac explained that manufacturers are putting profits over safety. Manufacturers will not stop selling ionization alarms until they are forced to stop.

• Dean Dennis, a self-taught expert from Ohio, began learning about the dangers of ionization alarms when he lost his daughter in a fire due to an ionization alarm failing to sound. His goal is to save lives of unsuspecting persons. Mr. Dennis noted in the radio program that an ionization alarm responds 30 minutes slower than a photoelectric alarm in the most dangerous type of fire—a slow-smoldering fire. Approximately 500,000 people die in house fires each year due to defective ionization smoke alarms.

Interestingly, there are states such as Vermont that do not allow new buildings to be sold with ionization detectors being the only device. New homes must have at least a photoelectric-type smoke detector in the home. There are certain cities around the country, including Boston and Cincinnati, that do not allow standalone ionization detectors. The U.S. is slowly waking up to the problem, but it is taking far too long for those in authority to do something about it. Folks are dying as a result of these detectors not functioning properly.

The smoke detector industry would like to have the three men mentioned above to simply go away. Fortunately, that will not happen until the industry changes its ways. These are brave individuals, who are willing and able to take on this industry in an effort to try and save lives, and they have no intention of leaving this on-going battle for safety. Lawyers at Beasley Allen have joined in that fight and they will not stop until standalone ionization alarms are no longer offered to the American public.
DANGERS ASSOCIATED WITH PORTABLE BED HANDLES

With the aging population in America, we are seeing more and more people who are living longer, but many are limited physically or mentally. There are lots of hazards created for the elderly citizens that wouldn't necessarily pose a hazard to a younger person. Let's take a look at bed handles, which are this type hazard. Bed handles are devices that are used to assist disabled persons from getting in and out of the bed. These bed handles have an L-shape design and are intended to slide between the mattress and box springs or under the bed. They also provide some assistance to keep disabled persons from falling out of the bed. These products are sold nationwide in drugstores, medical equipment stores and other locations.

In May, the Consumer Product Safety Commission (CPSC) and bed rail manufacturer, Bed Handles, Inc., located in Blue Springs, Mo., instituted a recall of 113,000 adult portable bed handles. At least three deaths have been reported related to the use of these portable bed handles. One of the deaths occurred at home and two others occurred in assisted living facilities. The deaths occurred after the individuals were entrapped between the bed handles and the mattresses. Because the handles are not stationary, they can slide or shift out of place, which can create a gap between the bed handle and the side of the mattress. This unintended movement of the device can create a serious risk of entrapment, strangulation and death.

The manufacturer suggests in the recall that these bed handles not be used without safety retention straps. The straps are designed to attach to the bed frame and to the bed handles for the purpose of reducing movement of the metal frame in order to eliminate the space or gap between the bed and the handle. The manufacturer says it will provide the straps free of charge for its product model numbers BA10W, BA11W and AJ1.

The manufacturer may be contacted at Bed Handles, Inc., 800-725-6903 (Monday through Friday, 8:30 am to 4:30 pm CT) or online at http://bedhandles.com/recall.html. Photographs of the recalled products can be found on the CPSC website at: http://www.cpsc.gov/en/Recalls/2014/Adult-Portable-Bed-Handles-Recalled-by-Bed-Handles-Inc.

NHTSA FIANLLY ISSUES A REAR UNDERRIDE STANDARD

The National Highway Traffic Safety Administration (NHTSA) has finally initiated a rulemaking to upgrade the rear underride standard for trucks. As we have mentioned in prior issues, there has long been a real need for an upgrade in the rear underride standard for trucks. Marianne Karth, who is with the Truck Safety Coalition, and 11,000 signatories, are due lots of credit for NHTSA finally taking action. They have succeeded where the Insurance Institute for Highway Safety (IIHS), even with all of its efforts, had failed. In early July, NHTSA published a notice in the Federal Register announcing that it would issue two separate notices:

• an Advance Notice of Proposed Rulemaking on rear impact guards and other safety strategies for single-unit trucks, and

• an NPRM on rear impact guards on trailers and semitrailers.

Apparently, it was a May 5 meeting between the Coalition and Secretary of Transportation Anthony Foxx that turned the tide. The advocacy group presented its signatures and made a strong case that amendments to FMVSS No. 223, Rear Impact Guards, and FMVSS No. 224, Rear Impact Protection, were long overdue.

To its credit, in 2011, IIHS submitted a petition to “require stronger underride guards that will remain in place during a crash and to mandate guards for more large trucks and trailers.” It appears that NHTSA neither denied it nor issued any official response to the petition. Clearly, the position should have been granted. The Institute presented lots of good data to the data-driven agency. The Institute examined crash patterns leading to rear underride of heavy trucks and semi-trailers with and without guards, using the Large Truck Crash Causation Study, a federal database of roughly 1,000 real-world crashes in 2001-03. It found that underride was a common outcome of the 115 crashes involving a passenger vehicle striking the back of a heavy truck or semi-trailer. The following is a recap of the rear guard protection battles that we received from Sean Kane:

• Rear guard protection has been a federal requirement since 1952, when the Bureau of Motor Carriers of the Interstate Commerce Commission required heavy trucks, trailers, and semitrailers to be equipped with a rear-end protection device designed to help prevent underride. The regulation contained no specifics as to the device's efficacy, but merely required the guard to be “substantially constructed and firmly attached.”

• In 1967, the Federal Highway Administration attempted to begin a rulemaking to require a rear underride guard for trucks, buses and trailers, but industry fought off any substantive upgrade to the regulations for 44 years.

• In 1996, NHTSA published a final rule establishing two Federal Motor Vehicle Safety Standards (FMVSS)—223, Rear Impact Guards, and 224, Rear Impact Protection.

• FMVSS 223, the equipment standard, specified strength requirements and compliance procedures for rear impact guards on semitrailers.

• FMVSS 224, the vehicle standard, specified mounting instructions and location specifications for those guards.

NHTSA has done little since 1996 to improve the rule. The IIHS, which has been advocating for a better rear underride standard for decades, has launched a series of research projects that have ranged from determining the scope of the problem to developing a new underride guard. Last March, the Institute published the results of its latest round of testing. IIHS has continued its research into effective underride prevention. In 2013, the Institute, which has worked long and hard on this project, published the results of the additional testing it performed.

If you need more information relating to the battle to get a stronger underride standard, contact Sean Kane, who is quite knowledgeable on this subject, as he is on automobile safety issues generally, at safetyresearch.com or by phone at 508-252-2333.

Source: safetyresearch.com

NHTSA WILL NOT CONSIDER A TIRE AGE SAFETY STANDARD

Last month, I wrote about the National Highway Transportation Authority’s (NHTSA) announcement that it was considering adopting a safety standard based on tire age. Unfortunately, NHTSA has already decided that it will not. In doing so, NHTSA has ignored an important safety issue for consumers, and the tire industry is applauding the decision.

NHTSA, in declining to establish badly needed tire-age standards, said that, “at this time, the agency does not believe it is necessary for motor vehicle safety to add a tire aging requirement to its light vehicle tire
standard.” NHTSA gave three reasons for its decision.

- First, current tire safety standards, which NHTSA revised as a mandate of the Transportation Safety Enhancement, Accountability and Documentation (TREAD) Act of 2000 have helped make tires more robust.
- Second, light vehicle tires are performing better on the road as reflected in our most recent crash data.
- Third, a mandatory TPMS (tire pressure monitoring system) on light vehicle tires since 2007 has helped alert consumers to underinflation that is also known to degrade tires faster.

Instead, NHTSA claims that it will begin a campaign to educate consumers and tire centers as to how to prevent tire failures related to aging, especially in hot-weather centers as to how to prevent tire failures more frequently. The NHTSA campaign remains to be seen. However, the agency’s decision ignores two basic realities.

- First, tire age can only be determined by deciphering the cryptic code on the tire’s sidewall. Until there is some requirement that tire makers provide an easier way to determine tire age, most consumers will not know how to determine their tire’s age to help prevent aging failures.
- Second, and most important, the tire centers have been warned for nearly a decade of aging issues and have chosen to ignore warnings and recommendations about placing aged tires into service.

It should be noted that in the cases lawyers in our firm have handled the tire centers use NHTSA’s failure as a defense. They say they haven’t adopted safety policies concerning aged tires because NHTSA has declined to adopt an official safety rule. As a result, we are still seeing large tire centers placing tires on vehicles that are very dangerous because of their age.

With its decision, NHTSA has once again failed to establish badly needed safety rules that the tire industry should follow relative to consumers and tire age safety issues. NHTSA’s decision has made the tire maker’s trade association, the RMA, very happy. Daniel Zielinski, RMA’s senior vice president of public affairs, said the agency’s decision was “good news for the tire industry.” Unfortunately, the decision is very bad news for tire safety and consumers. I suspect we will continue to see good folks hurt and killed because a tire failed due to age.

If you need more information on the above subject, contact Rick Morrison, a lawyer in our Personal Injury/Products Liability Section, at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com. Rick has handled a number of cases involving the aged tire issues and will be glad to talk with you.

XIII. MASS TORTS UPDATE

AN UPDATE ON THE FIRM’S MASS TORTS LITIGATION

We have again been asked to give an update on current activities in our firm’s Mass Torts Section. Lawyers in the Section have been very busy and are handling cases in several states in both state and federal courts. They will investigate any medication or device claim involving catastrophic injury or death. The following are some of the drugs and devices the Section is currently working on:

ACTOS

The FDA has approved updated warning labels for Actos, a prescription medication used to treat Type 2 diabetes. The updated label states that Actos usage for more than one year may cause bladder cancer. Actos, manufactured by Takeda, has been under FDA review since September 2010. In June 2011, the FDA issued a warning for Actos, while at the same time, drug regulators in France and Germany suspended use of the drug. We are currently investigating claims involving usage of Actos, Actoplus Met, Actoplus Met XR, Duetact and bladder cancer.

Lawyer: Roger Smith
Primary Staff Contact: April Worley

TRANSVAGINAL MESH

The FDA has issued an updated safety communication warning doctors, health care professionals and patients that the placement of surgical mesh through the vagina to treat pelvic organ prolapse and stress urinary incontinence may present greater risk for the patient than other non-mesh procedures. This is also called transvaginal mesh. According to the FDA, reported complications from the transvaginal placement of the mesh include erosion of the mesh into the vaginal tissue, organ perforation, pain, infection, painful intercourse and urinary and fecal incontinence. Often women require surgery to remove the mesh. In some cases, this can require multiple procedures without successfully removing all of the mesh. Currently, we are investigating cases involving mesh manufactured by American Medical Systems, Bard, Boston Scientific, Caldera, Coloplast and Johnson & Johnson.

Lawyers: Chad Cook and Leigh O’Dell
Primary Staff Contacts: Tabitha Dean or Melisa Bruner

TALCUM POWDER

Johnson and Johnson has known for decades that its talcum products, such as Shower to Shower baby powder, can cause ovarian cancer. But J & J has failed to warn women of the risk of using these products in the genital area. A Harvard medical doctor says that he has studied the link between talc and cancer for 30 years and believes talc is the likely cause for as many as 10,000 cases of ovarian cancer each year.

Lawyer: Ted Meadows
Primary Staff Contacts: Katie Tucker or Gwyn Harris

ANTIDEPRESSANTS

SSRI-antidepressants such as Celexa, Lexapro, Luvox, Paxil, Prozac and Zoloft are prescribed to treat depression. Studies in the last several years have shown an increased risk of heart birth defects in children born to mothers who took SSRI-antidepressants in the first trimester. Most of the cardiac defects observed in these studies were atrial or ventricular septal defects, conditions in which the wall between the right and left sides of the heart does not completely develop. We are currently investigating claims of birth defects involving children whose mother was taking an SSRI, Wellbutrin or Effexor during pregnancy.

Lawyer: Roger Smith
Primary Staff Contact: April Worley

BYETTA®, JANUVIA®, JANUMET® and VICTOZA®

These drugs are used to treat Type 2 diabetes. They have been prescribed to millions of people in the United States. Since approving the medications, the FDA has issued several warnings about links between them to complications related to pancreatic diseases. Recent
studies have linked these drugs to acute pancreatitis and pancreatic cancer. We are currently investigating claims of pancreatitis, pancreatic cancer and thyroid cancer.

Lawyer: David Dearing
Primary Staff Contact: Nancy LeGear

**GRANUFLO**

Granuflo® and NaturaLyte® are products used in the dialysis process. On June 27, 2012, the FDA issued a Class 1 recall of Granuflo® and NaturaLyte®. A Class 1 recall is the most serious FDA recall, reserved for situations in which the FDA deems “there is a reasonable probability that the use or exposure to a violative product will cause serious adverse health consequences or death.” Use of these dialysis products has been linked to an increase in the risk of cardiopulmonary arrest and sudden cardiac death. The manufacturer, Fresenius Medical Care, was aware of the dangers and injuries associated with these products but failed to warn patients and doctors until 2012. We are currently investigating death claims as well as claims involving heart attack, cardiopulmonary arrest or any other serious injury.

Lawyer: Frank Woodson
Primary Staff Contact: Renee Lindsey

**LIPITOR**

Lipitor, a statin drug to treat high cholesterol, was approved by the FDA in 1996 and is one the best-selling prescription medications in the world. Recent studies have found a possible link between Lipitor and the risk of developing Type 2 diabetes. A University of Massachusetts study found a potential link in postmenopausal women, particularly those who had a Body Mass Index (BMI) less than 25. Of the 153,840 women evaluated, more than 10,000 had developed Type 2 diabetes by the end of the study.

Criteria: Injured is female; took Lipitor consistently for at least two months; Injured was diagnosed with diabetes while taking Lipitor; or within six months of last dosage of Lipitor; Body Mass Index (BMI) of 30 or less at time of diabetes diagnosis; Injured has no or limited family history of diabetes.

Lawyer: Frank Woodson
Primary Staff Contact: Renee Lindsey

**METAL-ON-METAL HIP REPLACEMENTS**

Metal-on-metal hip replacement manufacturers have been under heavy scrutiny in the past few years regarding the dangers of their metal on metal hip devices. The main hip devices under scrutiny are:

- Johnson & Johnson/DePuy: ASR Total Hip Replacement and ASR Resurfacing System hip (Recalled on August 24, 2010);
- Johnson & Johnson / DePuy: Pinnacle metal-on-metal hip;
- Zimmer: Durom Cup hip;
- Stryker: Rejuvenate and ABG II Stems (Recalled on July 4, 2012);
- Biomet: M2a and 38 Diameter hips,
- Wright: (a) Conserve, (b) Dynasty, (c) Lineage and (d) Profemur (femur fracture) hips; and
- Smith and Nephew: R3 Liner hips (Recalled on June 1, 2012).

Metal-on-metal hip patients from the above manufacturers have similarly reported problems after their initial implant surgery resulting in revision surgery. All have reported a variety of symptoms, including pain, swelling and problems walking. These symptoms are normal for patients following a hip replacement, but can be a sign that something is wrong if they continue or come back frequently. Additionally, metal debris spreading in the hip area has been reported due to the metal on metal friction involved from the metal components moving together.

We would like to review any cases involving individuals who have had any of the above metal-on-metal hip devices implanted and all individuals unsure of the type of hip device implanted if the person has had revision surgery, or the person is experiencing hip pain, hip swelling or difficulty walking.

**MIRENA® IUD**

Mirena® is an IUD that was originally approved by the FDA as an intrauterine contraceptive. It was later approved as a treatment for heavy menstrual bleeding. It works by slowly releasing a low dose of levonorgestrel (a synthetic progestin hormone) directly into the uterus. Serious adverse side effects and potentially life-threatening complications have been reported following the implantation of the device. These complications include organ perforation, migration of the IUD to outside the uterus, expulsion of the IUD, and embedment in the uterus, among others.

Lawyer: Roger Smith
Primary Staff Contact: April Worley

**RISPERDAL**

Risperdal® is an atypical antipsychotic drug used to treat schizophrenia and certain problems caused by bipolar disorder. Risperdal is the brand name drug manufactured by Janssen Pharmaceuticals, Inc., a division of Johnson & Johnson. The drug went on the market in 1995 after receiving approval from the FDA for the treatment of schizophrenia. In 2003, the drug was approved for short term treatment of acute manic/mixed episodes associated with Bipolar I Disorder in adults. Until 2006, the drug was not approved for any indication to treat minors.

In 1997, the FDA denied a request by Janssen for a pediatric indication for the drug. Despite this denial, Janssen marketed the drug for the treatment of depression, anxiety, Attention Deficit Disorder (ADD), Attention Deficit and Hyperactivity Disorder (ADHD), conduct disorder, sleep disorders, anger management and mood enhancement/stabilization. Janssen promoted the use of the drug to treat these conditions in children and adolescents from 1994 until September 2006 despite no approved indication.

In 2006, Janssen obtained approval to market the drug for autistic irritability for children and adolescents between the ages of 5 to 16 years old. In 2007, Janssen obtained approval to market the drug for treatment of schizophrenia in adolescents between the ages of 13 to 17 years old and short-term treatment of manic or mixed episodes of Bipolar I Disorder in children and adolescents between the ages of 10 to 17 years old.

Use of Risperdal can cause gynecomastia (enlarged breasts in males), galactorrhea (milky nipple discharge), weight gain, hyperglycemia, diabetes and inhibited reproductive function. Recently, the presiding Judge in Philadelphia entered an order granting Jans-
and prostate cancer. Testosterone include decreased libido treatments Androgel, Testim and therapy, such as the prescription topical coronary artery disease. Testosterone entered the study with established coronary arteries were just as likely to have a heart attack, stroke, or die as men who started the study with established coronary artery disease. Testosterone therapy, such as the prescription topical treatments Androgel, Testim and Axiron, are used to help boost testosterone levels in men who have a deficiency of the male hormone. Symptoms of low testosterone include decreased libido and low energy. We are currently investigating claims of heart attack, stroke and prostate cancer.

**STEVEN'S-JOHNSON SYNDROME**

Steven's-Johnson syndrome (SJS) is an immune complex hypersensitivity reaction that can be caused from an infection or immune response to drugs. It is a severe expression of a simple rash known as erythema multiforme. SJS is also known as erythema multiforme major. It affects all ages and genders including pediatric populations. The most severe form of SJS is toxic epidermal necrolysis (TENS). SJS occurs twice as often in men as in women. Most cases of SJS appear in children and young adults younger than age 30. Females with SJS are twice as likely as males to develop TENS, and have an even higher chance if taking a category of drugs known as NSAIDs, non-steroidal anti-inflammatory drugs.

**TESTOSTERONE REPLACEMENT THERAPY**

Testosterone Replacement Therapy products for men have been linked to an increased risk of death, heart attack and stroke. Researchers found men who used testosterone therapy were 30 percent more likely to have a heart attack, stroke, or die after three years of use. Furthermore, men who started the study with clear, unobstructed coronary arteries were just as likely to have a heart attack, stroke or die as men who entered the study with established coronary artery disease. Testosterone therapy, such as the prescription topical treatments Androgel, Testim and Axiron, are used to help boost testosterone levels in men who have a deficiency of the male hormone. Symptoms of low testosterone include decreased libido and low energy. We are currently investigating claims of heart attack, stroke and prostate cancer.

**YAZ, YASMIN, OCELLA OR BEYAZ**

Yaz is a combination birth control pill containing drospirenone and ethinyl estradiol. It is marketed not only as a contraceptive pill, but as a proven treatment for premenstrual dysphoric disorder (PMDD), a condition with severe emotional and physical premenstrual symptoms. Yaz is also marketed as an effective treatment for moderate acne. However, studies indicate that Yaz poses a particular health hazard because one of its two primary ingredients, drospirenone, is a diuretic, which can cause an increase in potassium levels in the blood and lead to hyperkalemia, which causes heart rhythm disturbances that can cause blood clots leading to sudden cardiac death or pulmonary embolism or strokes. Diuretics can also cause significant problems with the gallbladder, leading to gallbladder removal. Criteria: Documented use of Yaz with a diagnosis of heart attack, stroke, pulmonary embolism or DVT.

**ZIMMER NEXGEN KNEE REPLACEMENTS**

Since 2003, more than 150,000 Zimmer NexGen Flex-Knee implants have been sold. Several different components used as part of the Zimmer NexGen Flex-Knee replacement system have been associated with increased risk of complications, including pain, swelling, loosening of component parts, and the need for follow-up/revision surgery. Several prominent surgeons want a Zimmer NexGen knee replacement recall to be issued. At a March 2010 conference of the American Academy of Orthopedic Surgeons, two knee surgeons presented data suggesting that the Zimmer NexGen Flex-Knee failure rate could be as high as 9 percent, and that the actual number of complications that require revision surgery could be even higher. The lead author of the study, Dr. Richard Berger, described the failure rate of the Zimmer NexGen CR-Flex Porous Femoral Component as "unacceptably high."

We would like to review any cases involving individuals who have had a Zimmer NexGen knee device implanted, or individuals unsure of the type of knee device implanted, if that individual has had revision surgery.

**FDA REJECTS BAN ON CONTROVERSIAL VAGINAL MESH PRODUCTS**

The U.S. Food and Drug Administration (FDA) has rejected a request from Public Citizen, the consumer advocacy group, to order recalls of existing surgical mesh products and ban their future sale. The FDA takes the position that a recent proposal to more rigorously review the devices is sufficient for now. In its response to a 2011 petition from Public Citizen, the FDA noted that it proposed earlier this year to require premarket approval of surgical mesh products used for transvaginal repair operations.

As we have reported, these devices have been the subject of thousands of lawsuits alleging serious side effects, such as pain and incontinence, and have caused tremendous problems for a huge segment of the female population in the U.S. For years the mesh products have been cleared for sale along the less-arduous 510(k) approval pathway. I am convinced that a recall was in order and that the FDA was wrong in refusing to grant the petition.

The FDA has refused to go further by ordering recalls or banning the mesh products outright. But it did decline to totally shut the door on such enforcement, writing that it “may consider future action against individual products or this product type as appropriate.” Hopefully, that’s not just a typical FDA response to a serious problem. The response also noted that some manufacturers may not be able to satisfy the stringent safety and effectiveness standards of premarket approval. It’s certainly possible, as the
FDA indicated, that some companies may not even bother trying to meet the standards.

Public Citizen’s petition had urged the FDA to adopt the premarket approval requirement for new mesh products. While the agency for technical reasons did not formally grant that request, regulators said their proposal earlier this year “initiated the process that could ultimately result in the action you seek.”

Michael Carome, director of Public Citizen’s Health Research Group and the petition’s author, stated that his group welcomes the move, but that he remains troubled by the lengthy process surrounding stricter oversight of mesh devices. It should be noted that the FDA first voiced concerns in 2008. It could be several more years from now before the proposed order on premarket approval is finalized and new clinical trials are performed to gauge whether products should stay on the market. Considering how truly bad the mesh products are, that is totally unacceptable. Carome observed:

Obviously we were pleased that they were taking this step, but we know that this is a long overdue action, and we found it disturbing that it had taken so long.

In order to ban a medical device, the FDA is required under federal law to find that the product “presents substantial deception or an unreasonable and substantial risk of illness or injury.” While regulators said in their response that they still believe sufficient benefits exist as compared with nonmesh surgical repairs, Carome accused the FDA of being too timid and said that enough evidence exists to halt sales. He said that the FDA, a regulatory agency all too often bows to the interests of corporations and doesn’t act in the interests of patients and public health.

Comments were being accepted on the FDA’s premarket approval proposal through July 30. Debate is also underway in Europe, where scientists have been tasked with re-evaluating the risk-benefit balance of mesh products and Scotland’s health secretary in June requested a temporary halt to sales of the devices.

If you need more information on this subject, contact Leigh O’Dell, a lawyer in our firm’s Mass Tort’s Section, at 800-898-2034 or by email Leigh.Odell@beasleyallen.com. Leigh has become quite knowledgeable because of her involvement in the ongoing mesh litigation. You can also contact Public Citizen by going to www.citizen.org for more information.

Source: Law360.com

$10 Million J&J Motrin Verdict Upheld In Pennsylvania Appeals Court

The Pennsylvania Superior Court has upheld a $10 million verdict returned against McNeil-PPC Inc., a Johnson & Johnson unit, in a case brought on behalf of a little girl who suffered skin burns and blindness after taking Children’s Motrin to treat a fever and cough. A three-judge panel rejected arguments by McNeil that there was no evidence that an omission on the warning label of the over-the-counter drug had led to the injuries suffered by Brianna Maya, who was 3 years old at the time of the illness.

In 2000, after the child came down with a fever, Maya’s mother gave her Children’s Motrin for four days. After first exhibiting a rash on her body that then led to blisters, the child was admitted to a Tennessee hospital and then transferred to a Texas burn unit. Maya was diagnosed with burns over about 84.5 percent of her body. She was later diagnosed with the disease toxic epidermal necrolysis (TEN), an especially severe form of Stevens-Johnson syndrome (SJS). Treating doctors testified that Maya had suffered severe eye damages as a result of TEN. Keith Jensen, a lawyer with Jensen & Associates, who represented Maya’s mother in this case, said in an interview:

Johnson & Johnson’s subsidiary McNeil did not challenge in its appeal that Motrin causes SJS and TEN, or that Motrin caused now 17-year-old Brianna Maya’s TEN and resultant blindness.

Maya’s mother had filed the suit against McNeil in the Court of Common Pleas in Philadelphia County in 2009. She said she would never have used over-the-counter Children’s Motrin had the package used the word “blisters” on the warning label. Judge Ford Elliott said in the court’s opinion:

Therefore, there was testimony that an adequate warning would have prevented Brianna from receiving the last four or five doses of Children’s Motrin.

The Plaintiff is represented by Howard Bashman, Scott David Levensten of the Levensten Law Firm PC and Keith Jensen of Jensen & Associates PLLC. They have done a very good job for Maya and her mother in this important case.

Source: Law360.com

JereBeasleyReport.com

XIV.
AN UPDATE ON SECURITIES LITIGATION

SEC Adopts Money Market Fund Reform Rules

On July 23, the Securities and Exchange Commission (SEC) adopted amendments to the rules that govern money market mutual funds. The amendments, adopted on a 3-to-2 vote, make structural and operational reforms to address risks of investor runs in money market funds, while preserving the benefits of the funds. The protection is mainly the result of requiring institutional money market funds (also called “prime” money market funds) to float their value instead of maintaining a value of $1 per share. Kara Stein, who we featured in an earlier article for her dissent to the SEC’s recent decision in a well-known seasoned issuer waiver decision, along with Michael Piwowar, voted against the measure.

The new rules require a floating net asset value (NAV) for institutional prime money market funds, which allows the daily share prices of these funds to fluctuate along with changes in the market-based value of fund assets and provide non-government money market fund boards new tools—liquidity fees and redemption gates—to address runs.

With a floating NAV, institutional prime money market funds (including institutional municipal money market funds) are required to value their portfolio securities using market-based factors and sell and redeem shares based on a floating NAV. These funds no longer will be allowed to use the special pricing and valuation conventions that currently permit them to maintain a constant share price of $1.00.

The reform was inspired by fallout from the Reserve Primary Fund in 2008. The fund’s exposure to Lehman Brothers’ bankruptcy the day before prompted panicked investors to yank their money. The fund “broke the buck,” meaning its net asset value fell below $1 per share. The Federal Reserve was ultimately forced to backstop the industry until the chaos subsided. The SEC hopes switching to a floating net asset value will prevent investors from getting spooked by the prospect of funds breaking the buck.

Another change involves a fund’s ability to impose redemption gates (a gate partially limits the ability of investors to redeem from a fund) and liquidity fees. According to SEC Chair Mary Jo White, these “reforms fundamentally change the way that money market funds operate. They will reduce the risk of
runs in money market funds and provide important new tools that will help further protect investors and the financial system.” In his dissent, however, Piowar disagreed, expressing concern over application of all three changes at once: floating NAV, liquidity fees, and redemption gates. He fears the changes will undermine both the stability and liquidity of money market funds. Most investors that commented on the rules prior to their adoption seemed to agree with Piowar.

The intent of these new rules was to provide stability in money market funds by preventing a mass exodus of investors. While liquidity fees and redemption gates will slow nervous investors’ ability to make a hasty withdrawal, Piowar and the rest of the opposition fear the rules undermine the benefits of investing in a money market—easy ability to liquidate investments and gain capital. Only time will tell how these new changes affect the money market funds, but for now, investors should be aware how these changes affect their investing practices.

Sources: http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542347679
http://www.sec.gov/News/Speech/Detail/Speech/1370542346300

**SOUTHERN CALIFORNIA JURY AWARDS $8.1 MILLION TO BB&T INVESTOR**

A South Carolina jury awarded $8.1 million last month to Francis Maybank, a former adviser who sold his wealth management business to BB&T Corp. He alleged in the lawsuit that the company disfavored his “retirement nest egg” with a risky strategy. The verdict, reached by a jury at the Court of Common Pleas for the Thirteenth Judicial Circuit in Greenville, S.C., included $3.1 million in actual damages and $5 million in punitive damages.

The Plaintiff filed the case against BB&T Corp. and two of its units in 2011. It was alleged that Maybank, a South Carolina resident, founded a trust and asset management company that BB&T acquired in 2001. BB&T bought Maybank’s firm, which managed $700 million in client assets, with 246,000 shares of BB&T company stock. Maybank hired BB&T’s wealth management division in 2006, after nearing age 74, to advise him on investing his retirement portfolio. It was alleged in the Plaintiff’s complaint:

> The BB&T advisers were required to act in Mayfield’s best interests because they were so-called “fiduciaries,” but instead put the company’s interests first by not recommending that Mayfield sell off the company shares and diversify his investments across multiple asset classes to minimize his market risks. BB&T recommended a complex investment strategy involving a type of derivative, a security whose value was linked to the performance of underlying BB&T stock, which BB&T advisers said would help him to reduce his concentration in the company’s shares while raising cash which he could invest in a diversified portfolio.

> They did not disclose to Maybank that the strategy would force him into an expensive cycle of rolling over one derivatives transactions into another, which locked him into paying more fees and incurring greater tax liabilities while depleting the amount available to him for investments.

Craig McCann, an economist in Fairfax, Va., who testified on behalf of Maybank during the trial, said that the Defendants “were really leveraging up investments and making it riskier, under the guise of diversifying and lowering the risk.” The firm and its advisers were said to have violated their fiduciary duties by not explaining the speculative nature of the strategy or fees he would have to pay, which included a $1.3 million upfront charge.

**STATE STREET PAIS MORE THAN $70 MILLION TO SETTLE 3 LAWSUITS**

State Street Corporation, an Asset Manager, will pay $70 million to investors and employees who claimed the company mischaracterized its mortgage-backed securities investments as “high quality” in late 2008, months before their value declined by $10 billion. The company will pay $60 million to settle the securities action and $10 million to settle two ERISA suits. It was alleged in the three class actions that State Street perpetrated multibillion-dollar frauds by overstating revenues from foreign exchange dealings and by telling investors its MBS buys were solid before they went in the tank. State street says on its web page that it partners with institutional investors to provide comprehensive financial services, including, among other things, investment management.

The securities lawsuit accused State Street and its current and former executives of violating securities laws and deceiving investors in 2008 when it assured them that securities contained in its investment portfolio—which were collateralized in part by risky mortgage-backed securities—were of high quality. The company’s stock dropped on Oct. 20, 2009, a day when two big pieces of State Street news came out. California’s attorney general on that day announced a lawsuit against State Street and, according to the settlement, the company also released a negative earnings report.

While the Plaintiffs argued the stock drop occurred because of the lawsuit news, the Defendants claimed it was because of the earnings report. Proving either version would have been difficult, according to the settlement memo. In August 2011, State Street lost a bid to toss the allegations when a judge denied four motions to dismiss various claims against the Boston-based bank, calling them “replete with detailed and well-plaid facts.”

U.S. District Judge Nancy Gertner’s 2011 opinion referenced suit by the California Attorney General, which accused State Street of cheating Golden State investors out of $200 million in forex overcharges, causing the bank’s stock to plummet by more than 8 percent on Oct. 20.

Source: Law360.com

**SILVER LAKE PARTNERS TO PAY $29.5 MILLION TO SETTLE LBO SUIT**

Silver Lake Partners has agreed to pay $29.5 million to settle an antitrust lawsuit alleging it conspired to limit competition in the leveraged buyout boom that preceded the financial crisis. Silver Lake is a private equity firm that specializes in buyouts in the technology sector. Silver Lake’s settlement, combined with some others, will provide about $150 million to investors who had been cheated as a result of the suppressed competition. It’s said that the settlement is “well within the range of fairness, adequacy and reasonableness” for such agreements.

In earlier pacts, Goldman Sachs Group Inc. agreed to pay $67 million and Bain Capital Partners LLC agreed to pay $54 million, subject to approval by U.S. District Judge William G. Young. Shareholders of companies that were acquired accused Goldman Sachs, Bain and banks and private-equity firms of conspiring to carve up the market for large leveraged buyouts, suppressing prices and depriving investors of billions of dollars.

Source: Bloomberg.com and Phil Milford at pmilford@bloomberg.net

BeasleyAllen.com
XV.
BUSINESS
LITIGATION

TWO NEW CLASS-ACTION LAWSUITS FILED

Two class action suits were filed last month in California against Panasonic, Samsung Electro Mechanic American Inc. and a number of other defendants, alleging that these companies colluded to fix prices for aluminum and tantalum electrolytic capacitors. Capacitors are electrical-charge storage devices imbedded within a circuit board. Their main purpose is to regulate and govern the flow of electrical currents through a device and insure there is adequate charge available to the device to perform the tasks we require. Capacitors are critical to the functionality of electrical devices. You can learn more about these lawsuits by going to our firm’s web page (www.beasleyallen.com).

Lawyers in our firm are working with other national law firms on this litigation. The class action lawsuits name about 20 companies and their affiliates as Defendants. The goal of this litigation is to correct market misconduct involving price fixing, something that hurts all American citizens. For more information about this subject, you can contact either Dee Miles, head of the firm’s Consumer Fraud Section, at Dee.Miles@beasleyallen.com, or Rebecca Gilliland, a lawyer in the section, at Rebecca.Gilliland@beasleyallen.com. They will be working on this project for the firm.

XVI.
INSURANCE AND FINANCE UPDATE

NATIONWIDE LEARNED A GOOD BUT PAINFUL LESSON

In a lawsuit that has been in court since 1998, Nationwide Insurance Company was ordered to pay $18 million in punitive damages to the Plaintiff. The lawsuit, involving faulty repairs to a Pennsylvania family’s vehicle, was based on the bad faith conduct of the insurance company. This is believed to be the largest punitive award ever handed down in Pennsylvania in a lawsuit accusing an insurer of bad faith.

Berks County Judge Jeffrey Sprecher said in his ruling that Nationwide spent $3 million to defend its actions in a claim involving a jeep owned by Sherri Berg. The jeep should have declared a total loss after an accident that occurred in 1996 and replaced by Nationwide for $25,000. Instead of replacing the vehicle, however, Nationwide had the Jeep repaired for half that amount. Those repairs were also faulty and the vehicle was later found to be unsafe.

What was extraordinary about the crash was the epic legal fight that followed. It pitted a father-and-son law firm in Chester County, Pa., against Nationwide Insurance, an industry giant. It was very much like the battle involving “David and Goliath,” as told in God’s word, the Holy Bible.

Rather than replace the Jeep, the judge found that Nationwide had engaged in an extensive cover-up, hiding crash photos and other relevant information from Mrs. Berg and her husband. He said Nationwide followed a written “litigation strategy” that called for it to fight smaller claims tenaciously—even though such a strategy had been previously denounced by Pennsylvania courts as “unethical and unprofessional.” Judge Sprecher concluded his opinion with a caustic list that he said was Nationwide’s message to customers who sued, and to their lawyers. This is what the judge found to be Nationwide’s message and what was said is shocking:

• “Do not mess with us, if you know what is good for you.”

• “You cannot run with the big dogs.”

• “There is no level playing field to be had in your case.”

• “You cannot afford it and what client will pay thousands of dollars to fight this battle?”

• “So we can get away with anything we want to.”

• “You cannot stop us.”

Judge Sprecher, who has served on the bench since 1992, said that “Nationwide was willing to risk the Bergs’ lives to save itself money on a collision claim.” He said the company had bet on the idea that “what Plaintiff, and more importantly, what lawyer in his right mind” would pursue such a case year after year? The judge awarded Benjamin J. Mayerson, the lead lawyer in the case, and his father, Hy Mayerson, $3 million in fees, on top of their share of the punitive award.

Citing the millions spent and the dubious “litigation strategy,” Judge Sprecher found that Nationwide was guilty of bad faith in its handling of a meritorious insurance claim. Sadly, Sherri Berg never knew the family won this victory. She died of cancer at age 62 on April 25, seven weeks before the ruling.

I have to agree with Judge Sprecher’s findings. This is a classic case of an insurance company’s bad faith handling of a claim. Clearly, this is conduct that deserves severe punishment. The two lawyers who hung in there and finally won a tremendous victory for their clients are to be commended. This father and son team deserve a “gold star” for their dedication to their clients and for fighting the good fight for a worthy cause.

Sources: The Philadelphia Inquirer and Claims Journal

XVII.
EMPLOYMENT AND FLSA LITIGATION

CLASS CERTIFIED IN LAWSUIT BROUGHT BY KPMG WORKERS

A New York federal judge has conditionally certified an Equal Pay Act collective action covering about 7,000 female employees of KPMG LLP. A $400 million sex bias lawsuit was filed against KPMG for allegedly underpaying female client service and support professionals. U.S. District Judge Lorna G. Schofield granted the Plaintiffs’ motion for conditional certification and ordered that notices be sent to all KPMG female employees who held specific positions in either the tax or advisory practice groups from October 2008 to the present. Judge Schofield said that the Plaintiffs made a “modest factual showing” that they and potential opt-in Plaintiffs are similarly situated. The judge wrote in a 21-page opinion and order:

Specifically, plaintiffs have submitted declarations detailing their personal experiences; documentary evidence of KPMG’s firm-wide compensation policies and job descriptions; and statistical evidence of discrimination. This is sufficient to satisfy plaintiffs’ burden at this stage of litigation.

Judge Schofield’s decision to conditionally certify the collective action means thousands of women will receive opt-in notices, which will explain that it is illegal for employers to retaliate against employees for exercising federally protected rights. Because of the large number of potential Plaintiffs, the judge set the opt-in period for 120 days.

Judge Schofield also granted in part and denied in part KPMG’s motion to dismiss certain Plaintiffs’ Rule 23 class claims for lack of standing. KPMG’s lawyers had argued that two of the named Plaintiffs couldn’t
bring such claims because they were not seeking or not eligible for reinstatement. The judge rejected the Defendant’s motion as to one of the named Plaintiffs, Donna Kassman, but granted it as to fellow named Sparkle Patterson, a fellow Plaintiff in the lawsuit. Judge Schofield made a most important ruling, saying in his order:

> At the end of the day, all kinds of relief remain viable in the case, as there are Rule 23(b)(2) eligible representatives. Thus, when plaintiffs move for Rule 23 certification, plaintiffs have the option to seek both Rule 23(b)(2) and (b)(3) certification.

The judge’s dual decisions last month are the most recent developments in the ongoing sex bias action, coming more than a year after KPMG asked the court not to stop the clock on the statute of limitations for potential members of the Equal Pay Act (EPA) collective action. In June 2013, KPMG lodged its opposition brief in response to the Plaintiffs’ motion for equitable tolling for absent collective action members’ claims under the EPA, which is a component of the Fair Labor Standards Act. At a hearing on Aug. 1, 2013, the court denied Plaintiffs’ motion for equitable tolling without prejudice to renewal by future opt-in Plaintiffs, saying it would allow discovery and notice to be issued as if the motion had been granted.

The Plaintiffs, who filed suit in June 2011, are seeking relief under the EPA and other laws for female client service and support professionals who allegedly faced gender, pregnancy and caregiver discrimination at the audit, tax and advisory services firm. The third amended complaint, filed in June of 2012, alleged that women at KPMG were both under-promoted and underpaid. KPMG claims that the Plaintiffs’ allegations are without merit, and said it would “vigorously defend itself.”

The case is in the United States District Court for the Southern District of New York. We will monitor this extremely important case as it progresses through the system.

Source: Law360.com

**Safeguards Needed To Protect The Public Against Predatory Lenders**

*July 14, 2014—Splcenter.org*

I can’t think of many industries that do as much damage to ordinary folks who have to borrow money than the payday and title lenders that prey on the most vulnerable citizens, trapping them in a nightmarish cycle of debt when they already face financial distress. These predatory lenders typically operate in low-income neighborhoods and lure unsuspecting borrowers with advertisements offering easy access to cash. They target customers who are down on their luck and who have little ability to pay off their loans, but who trust, wrongly, that the lenders are subject to regulations that protect consumers from usurious rates and unfair practices. Alabama is one of the worst offenders when it comes to protecting the payday and title lenders.

The predatory lenders in Alabama have no incentive to act as a responsible lender would. That’s because of our legislature’s failure to pass laws regulating them. The profit model of these predatory lenders is based on extending irresponsible loans that consumers cannot possibly repay on time. Our elected officials must step in to ensure that these lenders can no longer drain needed resources from our most vulnerable communities. Alabama Arise has made some solid and well-reasoned recommendations that should serve as a guide to lawmakers in establishing much-needed protections for small-dollar borrowers. I will set those recommendations, which I agree with, out below:

- Annual interest rate should be limited to 36 percent;
- A minimum repayment period of 90 days should be set;
- The number of loans per year must be limited;
- There must be a meaningful assessment of a borrower’s ability to repay;
- A workable centralized database must be created;
- Incentive and commission payments for employees—based on outstanding loan amounts—must be prohibited;

**Sears Pays $5 Million To Settle Overtime Class Action**

*July 17, 2014—Law360.com*

Sears Holdings Management Corp. has agreed to pay $5 million to end a proposed class action accusing the retail giant of misclassifying about 700 employees at Sears and Kmart retail stores as “overtime exempt” in violation of the Fair Labor Standards Act (FLSA). If approved by U.S. District Judge Milton I. Shadur, the settlement will end the Illinois federal court suit that was filed in July 2011 by named Plaintiff Robert O’Toole on behalf of current and former loss prevention managers at Sears and Kmart stores across the country who were denied overtime compensation. The motion for approval of the settlement said:

> This settlement resolves all current and potential litigation concerning the classification of the LPM position. The parties believe that the settlement is fair and reasonable and in the best interests of the class members [and it] spares the litigants the uncertainty, delay and expense of a trial, while simultaneously reducing the burden on judicial resources.

The O’Toole lawsuit, which was amended in April 2012 to include 13 more named Plaintiffs, alleged Sears and Kmart had a “policy and practice” of refusing to pay employees overtime for working more than 40 hours per week. As part of the deal, the parties are seeking certification for a collective class of employees making claims under the FLSA as well as seven classes of employees in Illinois, California, Oregon, Washington, New Jersey, New York and Pennsylvania making claims under each of the states’ various wage laws, according to court documents.

Judge Shadur had conditionally certified the collective action under FLSA in October 2011. To date, 657 class members have opted into the collective action, according to the settlement. The FLSA class would include all Plaintiffs who opted into O’Toole’s suit as well as class members from a second related class action as of July 14. The state wage law classes, excluding the New York group, would include Sears or Kmart employees who worked for the retail chains from as far back as 2009. Unlike all the other subclasses, however, the proposed New York class would not include Kmart workers and would cover Sears employees in the state stretching back to 2006.

The related suit, filed in January by named Plaintiff Michael Nowalski, includes a proposed class of 36 individuals who did not opt into the O’Toole class. As part of the settlement, the Nowalski suit will be voluntarily dismissed and its class members would be eligible to receive funds from the recent settlement.

Source: Law360.com
A California jury last month found the Los Angeles Dodgers partially liable for poor stadium security that contributed to the tragic beating of Bryan Stow, a San Francisco Giants fan, in 2011. The baseball team was ordered to pay Stow $15 million of a total $18 million in damages that were awarded. It had been alleged that the Dodgers and then-owner Frank McCourt were legally responsible for the beating of Stow because of inadequate security. The jury found that the Dodgers were 25 percent liable for the attack, while the "thugs," who were described as stadium-goers, and who beat Stow, were found to be 75 percent liable. The jury found in favor of McCourt and also found that the victim—Mr. Stow—didn’t provoke the attack. The team is responsible for all lost wages and medical bills awarded by the jury, totaling $14 million, plus about $1 million for pain and suffering. The remaining amount would be owed by the aggressors. Stow alleged the Dodgers had hired fewer off-duty police officers to stand guard than in previous years, a point disputed by the Dodgers, who said they had security at record-high levels during the March 2011 season opener.

The attack that occurred after the Dodgers’ opening day game on March 31, 2011, put Stow, then a 42-year-old paramedic and father of two from Santa Clara, Calif., into a coma. He was left unable to care for himself, with permanent brain damage. Stow alleged that the Dodgers and McCourt’s negligence caused the beating. The Dodgers fans Sanchez and Norwood attacked Stow, who was wearing a Giants jersey, and kicked his head as he lay unconscious. Stow is now disabled and living with his retired parents.

Source: Law360.com

XX. WORKPLACE HAZARDS

INVESTIGATORS SAY OVERLOADED STORAGE BINS CAUSED BUILDING COLLAPSE

**July 23, 2014—InsuranceJournal.com**

Two workers were killed in an incident in January that occurred at a livestock and feed manufacturer’s plant in Omaha, Neb. Federal investigators have determined that overloaded storage bins on the roof of the plant caused the building collapse that killed the two men. The Occupational Safety and Health Administration (OSHA) announced its findings on July 21 and cited International Nutrition for 16 violations of safety and health rules.

OSHA is proposing $120,560 in penalties and wants to impose strict oversight on the company because of the violations. OSHA says nine storage bins on the plant’s roof were overloaded, and that the additional weight caused three floors to collapse inward in about 30 seconds. The collapse killed 47-year-old David Ball and 53-year-old Keith Everett and injured several others.

Source: Insurance Journal

OSHA ISSUES SAFETY VIOLATIONS TO BRIDGE COMPANY

**January 8, 2014—AL.com**

You may recall that our firm filed a wrongful death lawsuit arising out of a work-related accident that occurred at a bridge construction site located east of Montgomery. Now R.R. Dawson Bridge Co. LLC, the contractor on that job, has received four safety violations from the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA). The fines resulted from an investigation into the falling deaths of the two workers who were killed. The workers, Lomax Phillips and David Lee White, were killed in January when a lift they were working in during the construction of the Interstate 85 Outer Loop overpass fell 90 feet to the ground. In the lawsuits, the families of each of the men are suing R.R. Dawson Bridge Co. Joseph Roesler, who is OSHA’s area director in Mobile, stated in a release:

*Falls continue to be the leading cause of fatalities in the construction industry, but these hazards can be easily identified and eliminated to save lives. OSHA will continue to enforce fall protection requirements aggressively to reduce deaths.*

OSHA says the bridge company failed to provide employees working near the bridge’s edge with required fall protection. This resulted in a willful violation by the company. It should be noted that a willful violation is one committed with intentional, knowing or voluntary disregard for the law’s requirements, or with plain indifference to worker safety and health. Three serious violations were issued for exposing workers to fall hazards and for failing to inspect employee fall arrest systems before use. A serious violation occurs when there is substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known, according to OSHA.

According to the Bureau of Labor Statistics, preliminary data from the Censuses of Fatal Occupational Injuries shows that in Alabama there were 84 fatalities in 2012 and 4,628 in the United States. Greg Allen, the lead lawyer for our firm in the pending litigation against R.R. Dawson, says the violations don’t really affect our case. While the OSHA violations are damaging for R.R. Dawson, Greg says our lawsuit is based on a serious design defect and a failure of a product to protect the workers.

Source: AL.com
As I wrote last month, this case will get lots of media attention because of the star-status of the person involved. That attention will help get the message out relating to truck drivers who are allowed to drive when fatigued.

Source: Insurance Journal

**Tracy Morgan Files Suit Against Wal-Mart**

We wrote last month about the highway crash involving Tracy Morgan, in which the former “Saturday Night Live” star was seriously injured. As we noted previously, another comedian was killed in the crash. The lawsuit, filed by Morgan and others in U.S. District Court in New Jersey, claims Wal-Mart was negligent when the driver of its trucks crashed into the limousine van occupied by Morgan and the others on June 7. The complaint filed alleges that Wal-Mart should have known the driver had been awake for more than 24 hours, and that his commute of 700 miles from his home in Georgia to work in Delaware was “unreasonable.” It also alleges the driver fell asleep at the wheel. Morgan seeks punitive and compensatory damages in the lawsuit. It was alleged in the complaint:

_As a result of Wal-Mart’s gross, reckless, willful, wanton, and intentional conduct, it should be appropriately punished with the imposition of punitive damages._

The wreck on the New Jersey Turnpike killed 62-year-old comedian James McNair, who went by the name Jimmy Mack. Comedian Ardley Fuqua and Jeffrey Millea, other passengers in the limo, were also injured and are named as Plaintiffs in the lawsuit. Morgan, the former “30 Rock” star, suffered a broken leg and broken ribs in the crash and is currently in a rehabilitation center. Fuqua is recovering from crash-related injuries. The truck driver, Kevin Roper, who is from Jonesboro, Ga., has pleaded not guilty to death by auto and assault by auto charges. A criminal complaint also accuses him of not sleeping for more than 24 hours before the crash, a violation of New Jersey law.

A report by federal transportation safety investigators said Roper was driving 65 mph in the 60 seconds before he slammed into the limo van. The speed limit on that stretch of the turnpike is 55 mph and was lowered to 45 mph that night because of construction. The driver, Roper, had been on the job about 13 1/2 hours at the time of the crash, the report concluded. Federal rules permit truck drivers to work up to 14 hours a day, with a maximum of 11 hours behind the wheel. Morgan, a New York City native, was returning from a standup comedy performance at Dover Downs Hotel & Casino in Delaware when the crash occurred.

As I wrote last month, this case will get lots of media attention because of the star-status of the person involved. That attention will help get the message out relating to truck drivers who are allowed to drive when fatigued.

Source: Insurance Journal

**There Were 10 Deaths And 123 Injured During 4th Of July Travel Period In Alabama**

Alabama State Troopers investigated 237 crashes resulting in 10 deaths and 123 injuries during the Fourth of July travel period, according to the Alabama Department of Public Safety. The travel period is considered by the troopers to be the 78 hours from 6 p.m. Thursday through midnight Sunday. Law enforcement presence was increased during this time.

Troopers issued 1,837 speeding citations, 466 seat belt/child restraint citations and arrested 68 people for driving under the influence. Fatal crashes were investigated by troopers in Coffee, Lowndes, Mobile, Monroe, Perry, St. Clair, Tuscaloosa and Walker counties. The figures include only crashes that troopers actually investigated. Complete figures from local law enforcement agencies statewide could take a few months to compile, according to Sgt. Steve Jarrett, spokesman for the Troopers. Sgt. Jarrett does a tremendous job alerting the driving public in Alabama to matters involving safety issues. He is an asset to the Department.

Source: AL.com

**An Update On Boating Accidents**

As we all most likely know, the majority of recreational boating accidents and fatalities occur in the summer months. This comes as no surprise as the number of recreational vessels on the nation’s waterways drastically increases during the warm weather months. There are countless causes and scenarios that lead to boating accidents, but all too often they are preventable. Looking at statistics gathered by the United States Coast Guard (USCG) for a 30-year time frame sheds light on the many ways to decrease the likelihood of recreational boating accidents.

In 2013 alone, 4,062 boating accidents were reported to the USCG. Of those accidents, 2,620 resulted in injuries and 560 resulted in death. Although these numbers are high, all three categories were down by more than 10 percent from 2012. Of the 2013 fatalities where cause of death was known, 77 percent were due to drowning.

Although this may seem commonsensical—that fatalities on the water are often due to drowning—consider that 84 percent of those victims were not wearing a life jacket. As the name implies, life jackets are as important of a lifesaving tool on the water as seatbelts are on the roadways. It is imperative that life jacket use become common practice when on the water.

Another preventable trend that has remained nearly constant in the USCG data is that alcohol use is the leading known contributing factor in fatal boating accidents year to year. Despite campaigns from the USCG and many state and local agencies aimed at educating the public about the dangers of boating under the influence, accidents involving alcohol continue to be the leading factor in boating fatalities. Alabama law enforcement agencies in recent years have joined an initiative called “Operation Dry Water.” This program was established to educate the public of the laws against boating under the influence (BUI) and also placed an emphasis on enforcing those laws. Much like the DUI laws in Alabama, a boater with a blood alcohol concentration percentage greater than .08 is considered over the legal limit. The penalties for those convicted of BUI include fines from $600 to $2,100, up to one year of jail time and/or a 90-day suspension of his or her operator’s license for a first offense. The penalties stiffen if convicted of multiple offenses. Interestingly, if an operator older than 21 is convicted of BUI with a child younger than 14 in the vessel, the minimum punishments are automatically doubled. Alabama law enforcement has taken appropriate measures to address the serious problem of boating under the influence and the deadly results it can cause.

Unfortunately, lawmakers and law enforcement can only do so much. One would hope stiff penalties and persistent enforcement would make boaters think twice before operating a vessel under the influence. However, all too often these laws are not heeded. In Texas, state game wardens arrested 60 boaters for operating a vessel under the influence of alcohol or drugs in a single weekend earlier this month. Despite penalties for BUI increasing in recent years and many campaigns launched to raise awareness of the dangers, too often the general public seems to either not appreciate or not care about the dangers boating and alcohol pose.

Statistics help quantify what is readily apparent to most. Just as stats related to automobile fatalities show a significant link to alcohol use, the same goes for the waterways. Unfortunately, in both situations, it is not always about the choices you make, but the decisions of the drivers and boaters you share the roads and waterways with as well.
If you need more information on this subject, contact Evan Allen, a lawyer in our firms Personal Injury/Products Liability Section, at 800-898-2034 or by email at Evan.Allen@beasleyallen.com.
Sources: http://www.uscgboating.org/assets/1/AssetM anager/2013RecBoatingStats.pdf
http://www.operationdrywater.org/index.php/odw/ lawenforcement
http://www.outdooralabama.com/boating/alcohol.cfm

XXII.
HEALTHCARE
ISSUES

JOHNS HOPKINS SETTLES PELVIC EXAM LAWSUITS
FOR $190 MILLION

Johns Hopkins Hospital has agreed to pay $190 million to settle a class action filed by thousands of women who were secretly videotaped during gynecological examinations by a doctor, Nikita Levy, who was a staff at the hospital. The preliminary settlement, approved by Baltimore City Circuit Court Judge Sylvester Cox is believed to be the largest settlement of this sort. A fairness hearing, at which a final approval will be considered, is scheduled for Sept. 19 in Baltimore City Circuit Court.

About 3,800 women were identified as victims of Dr. Levy, who practiced at Johns Hopkins for 25 years before being fired in February 2013. He killed himself on Feb. 19, 2013, two weeks after an employee of the hospital told higher-ups at Johns Hopkins about a penlike device Dr. Levy wore around his neck during patient examinations that she believed to be a camera. While Johns Hopkins did not admit to wrongdoing, it did say in a statement it believes the settlement is “fair and properly balances the concerns of thousands of Plaintiffs with the obligations the health system has to provide ongoing and superior care to the community.” The statement said further:

It is our hope that this settlement—and findings by law enforcement that images were not shared—helps those affected achieve a measure of closure. We assure you that one individual does not define Johns Hopkins. Johns Hopkins is defined by the tens of thousands of employees who come to work determined to provide world-class care for our patients and their families.

After receiving the insider tip, Johns Hopkins Hospital security searched Dr. Levy’s office and uncovered several of the penlike devices. Baltimore County police also stormed his home with search warrants and uncovered multiple data storage servers suspected of housing explicit depictions of his patients. The class action suit filed last fall alleged that the institution failed to “discover, stop and report” Dr. Levy because its staff was not trained to recognize and report perverse conduct and patients were not offered the option of having a chaperone present during examinations and procedures. It was also alleged that the institution failed to investigate properly reports of misconduct.
Source: Law360.com

THE PRICES OF GENERIC DRUGS ARE GOING UP

The total amount of money our citizens spend on prescription drugs each year has been rising in the last decade. Similarly, in most states, Medicaid agencies are seeing an increasing amount of their budget going to cover the cost of prescription drugs. Although there are certainly problems with the over-prescribing of some medicines that contribute to the rising cost, much of the increase in total expenditures is attributable to the actual price of some medicine. It is true that prescription drugs can be a cheaper form of treatment—say, cheaper than going to the emergency room—but the increasing price of some drugs, particularly generic drugs, is a troubling trend.

As you may know, prescription drugs are generally broken down into two categories—“brand name” drugs and “generic” drugs. When a prescription drug first comes to the market, it is called a brand name drug. In these instances, the law provides the pharmaceutical company that first developed the brand name drug protection from competitors in the form of a patent. Because no one else can make the exact same drug, the pharmaceutical company with the patent is the only one allowed to sell that prescription drug.

Because there is only one company making this drug, the cost is higher than if companies were allowed to compete for a customer’s business. After are significant length of time (usually more than 12 years) has passed, “generic” drug companies are allowed to start making prescription drugs that are virtually identical to the brand name drugs. However, contrary to what most people think, generic drugs aren’t always that much cheaper.

Under existing law in the U.S., the first generic drug to be sold is usually given a six-month “exclusivity” period. This means that no other generic drug of the same type can be sold during that period. Although the first generic is cheaper than the brand drug, it is only slightly cheaper and often still very expensive. After the first six months, other generic drug companies may decide to make equivalent generics. However, there is no guarantee that other companies will decide to enter the market. Typically, it has been thought that the more generic companies compete for the same business, the lower the price consumers will pay for generic drugs. But, recent data suggests that might not be true. And, for some drugs that were initially priced lower, they are experiencing price increases—in some cases between 600-1000 percent higher.

These price increases affect not only consumers, but also small “mom and pop” pharmacies that can’t compete with the big chain pharmacies when it comes to bulk discounts. Recently, the National Community Pharmacy Association called for congressional hearings on generic drug prices. In a recent New York Times investigation, the newspaper found that drug prices on certain prescriptions had tripled in the last nine months and can be as much as $1000 per monthly supply. Even with good insurance, these price increases can translate into hefty co-pays for many Americans.

Industry insiders claim that price increases for generic drugs are only temporary and usually are due to some type of production shortage or shut down. However, the Food and Drug Administration (FDA) has clearly found instances where there were large price increases and no apparent shortage. In fact, what appears to be happening is that one drug manufacturer will raise its prices and the others will follow suit and match the increase. This phenomenon sometimes happens in the airline industry. One company will raise prices or startcharging more for baggage, and the others will follow suit and raise their prices. Instead of competition lowering prices, in many cases it works to raise the cost of flying.

In the drug industry, this effect generally occurs when there are only two to three generic companies making a certain drug. For there to be true competition that results in lower prices, some studies show you need four or five generic companies competing. Hopefully, Congress will wake up soon and start helping those Americans who are being crushed by monthly prescription drug costs.

If you need more information on this subject, contact Roman Shaul, a lawyer in our Consumer Fraud Section, at 800-898-
Two cases decided in New York recently have taken the attention away from that state’s environmental study on hydraulic fracturing. According to reports, the oil and gas industry’s attention definitely shifted last month from the “regulatory” front to the “litigation” front when New York’s highest court upheld ordinances enacted by two municipalities banning fracking within its borders.

Many cities and towns across the country have enacted similar ordinances that effectively ban fracking where state regulations permit such activities. Many of these local ordinances have been challenged by companies on the basis of preemption. Those challenges will continue. Courts around the country will have to address the relationship between state and local governments and their respective legislative powers when it comes to regulating the highly debated subject of fracking. The two New York cases will be discussed below:

IN MATTER OF WALLACH V. TOWN OF DRYDEN, NORSE ENERGY CORP.

The Town of Dryden was sued over its amendment to a zoning ordinance that effectively banned all activities related to fracking within the town’s borders. Dryden is a rural community where Norse began acquiring leases for fracking. The company claimed that the ordinance was preempted by the supersession clause of the Oil, Gas and Solution Mining Law (OGSML), which regulates the production and development of oil and gas in New York. The company argued that the statute demonstrates the Legislature’s intention to preempt local zoning laws interfering with energy production.

COOPERSTOWN HOLSTEIN CORP. v. TOWN OF MIDDLEFIELD.

Cooperstown Holstein Corp., a dairy farm that had previously entered into oil and gas leases, filed suit against the Town of Middlefield, challenging on preemption grounds the town’s zoning law that prohibited fracking. The town board emphasized that the town was “known worldwide for its clean air, clean water, farms, forests, hills … and concluded that fracking would eliminate these features” and “irreversibly overwhelm the rural character of the town.”

The trial court in each of the above cases rejected the preemption claim and upheld the local zoning ordinance. The New York Appellate Division, Third Department unanimously affirmed, holding that OGSML did not preempt the towns’ zoning ordinances banning all fracking activities within its borders. The New York Court of Appeals has agreed to hear appeals from these two cases. The court’s decision to grant leave to appeal was expected due to the ongoing debates surrounding the policy, scientific research and regulatory issues on fracking, not only in New York, but around the country.

It’s unclear what effect the decisions will have on the current moratorium on fracking currently in effect in New York. Now, even if the state’s moratorium is lifted, absent further action by the Legislature to make preemption explicit, oil and gas companies may still be prohibited from fracking in the majority of the state. That’s due to individual municipalities’ enactment of zoning laws that ban fracking within their borders. The lack of uniformity and uncertainty across New York may deter oil and gas companies from investing in fracking operations throughout the state. It may also require a closer look at the practice of fracking with both need and safety being addressed.

Source: Law360.com

POLLLUTION PLAGUES THE WATER IN ALABAMA

A 2014 report from the Environment America Research and Policy Center paints a pretty bad picture of Alabama’s rivers and lakes. Drawing on data industries are required to provide to the U.S. Environmental Protection Agency (EPA) each year, the report makes it clear Alabama must do much more to protect its iconic waters from pollutants and to safeguard human health, wildlife and the state’s fishing and tourism economies, which rely on clean waterways.

Alabama ranks fourth among 50 states for total toxic discharges. Industries such as stainless steel mills, pulp and paper mills and timber plants released 12.3 million pounds of pollutants into waterways in 2012. Unfortunately, Alabama is:

• Second in the nation for release of cancer-causing chemicals, with 119,116 pounds pouring into its rivers and streams; and
• First in the nation for total reproductive toxins, with 765,972 pounds released.

Specific watersheds of concern include the Lower Tombigbee River, Wheeler Lake and the Lower Alabama River. Based on this and other reports, it appears that toxic dumping in Alabama is on the increase. In Environment America’s previous water pollution report issued in 2012, Alabama ranked 8th in the nation with 9.8 million pounds of toxic dumping. The nearly 25 percent jump to 12.3 million pounds in this year’s report is a startling increase that needs thorough investigation. Clearly, actions must be taken to reverse this dangerous trend. The question is whether that will happen.

Inadequate state funding has to be a major cause of worsening water pollution scenarios in Alabama. Years of deep budget cuts to the Alabama Department of Environmental Management have left the agency bordering on the edge of noncompliance with federal regulations in permitting, inspecting and fining companies that may have violated anti-pollution laws. Cindy Lowry, executive director of the Alabama Rivers Alliance, made this observation:

Alabama must realize the need for more investment in the protection of our waterways and adequately fund the agencies that are charged with implementing the Clean Water Act.

We can’t afford to tie the hands of pollution regulators either at the national or state levels. To do so will only continue to see the problems get worse. Alabama’s reputation is one that polluters have pretty well run the show. The health and well-being of the people of Alabama must be considered and protected.

On the national level, proposed rule changes to the Clean Water Act now under review at the EPA are another critical step to rein in unlawful discharge of pollutants. The changes clarify which bodies of water, such as tributaries that filter to rivers, must be protected from toxic dumping. These make sense because of the interconnected nature of water systems. Common-sense exemptions carved out for agriculture can remain in place.

If they really care about halting the degradation of rivers, lakes, bays and wetlands in our state, members of Alabama’s congressio-
Fraudulent marketing campaigns and dishonesty from federal aid programs, such as Title IV funds, have contributed to the growing student debt crisis. For-profit colleges receive much of their revenue from student tuition payments and signed a Memorandum of Understanding with the DOE on June 22. This allowed an immediate release of $16 million of Title IV funds to continue normal operations. Under the operating agreement, the DOE will provide $35 million in student tuition payments; however, the company’s activities will be closely supervised by an independent compliance and business monitor. This action by the DOE signals a change in enforcement tactics that should concern for-profit schools nationwide.

Contact Jake Jeter, a lawyer in our firm’s Consumer Fraud Section, for more information on this subject at 800-898-2034 or by email at JakeJeter@beasleyallen.com.

**FDA DETAILS RISK-BENEFIT STANCE ON 510(k) DEVICES**

We have written in previous issues about how product safety is increased by using the system of 510(k) premarket approval processes that were designed to ensure that medical device manufacturers will abuse this system. The FDA says that it’s willing to consider the what limitations of the existing system may have on how this process works and what limitations of the existing system may have on how this process works.

FDA officials described a number of hypothetical scenarios to flesh out their thinking on how devices with new technologies will be approved. Regulators also provided seven hypothetical scenarios to flesh out their thinking on how devices with new technologies will be approved.

On July 3, California-based Corinthian Colleges Inc., reached an operating agreement with the DOE to sell off 85 of its schools and close down operations at 12 others. The agreement is the most recent move for the troubled institution, which is also being investigated in a dozen states over allegations that it falsified job placement rates and student attendance records in order to boost enrollment. After Corinthian failed to satisfy a request by the DOE to turn over its records on job placement, the agency placed a three-week hold on the school’s access to federal student loan and grant money, the main source of its revenues.

The DOE has established a method to force corrupt for-profit colleges out of business by applying current regulations more stringently. Due to the three week moratorium on Title IV funds, Corinthian had to choose between agreeing to wind down its operations or potentially shutting down due to its insolvency. With only $28 million in funds as of May 6, the company could not wait any longer for government-subsidized tuition payments and signed a Memorandum of Understanding with the DOE on June 22. This allowed an immediate release of $16 million of Title IV funds to continue normal operations. Under the operating agreement, the DOE will provide $35 million in student tuition payments; however, the company’s activities will be closely supervised by an independent compliance and business monitor. This action by the DOE signals a change in enforcement tactics that should concern for-profit schools nationwide.

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XXIV.
THE CONSUMER CORNER

**COLLAPSE OF CORINTHIAN A WARNING TO FOR-PROFIT COLLEGES**

In the past few years, the U.S. Department of Education (DOE) has struggled to get a handle on the growing student debt crisis. For-profit colleges receive much of their revenue from federal aid programs, such as subsidized student loans and Pell Grants. For-profit colleges received $35 million in student tuition payments; however, the company’s activities will be closely supervised by an independent compliance and business monitor. This action by the DOE signals a change in enforcement tactics that should concern for-profit schools nationwide.

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**OUTLOOK FOR THE FUTURE**

The guidance went into further detail in describing how the FDA will gauge risks and benefits. The amount of overall risk depends on the frequency, severity and duration of side effects, and similar considerations surround appraisals of benefits, the guidance said. Regulators also provided seven hypothetical scenarios to flesh out their thinking on how devices with new technologies will be approved.

Alternately, the FDA described the theoretical example of a tampon manufacturer that claimed to create a more comfortable product but also failed to convincingly demonstrate that its particular synthetic material would not increase the risk of bacterial growth associated with toxic shock syndrome. In such a situation, the product might not be similar enough to warrant 510(k) approval, the guidance said.

Based on our firm’s past litigation history with the manufacturers of drugs and medical devices, I am concerned that the medical device manufacturers will abuse this process. If so, the health and safety of persons using their products could be put in serious jeopardy. There have definitely been significant abuses in the past and, for that reason, I hope Congress will change this law to better protect the public.

Source: Law360.com

**CPSC FINES APPLIANCE MAKER OVER DEFECT REPORT DELAY**

HMI Industries Inc., a cleaning appliance company, has agreed to pay a $725,000 civil penalty to the U.S. Consumer Product Safety Commission (CPSC). The penalty is for an alleged defect in its floor cleaners that can cause them to overheat and pose a burn hazard. The agency accused the company of knowingly delaying reporting the alleged defect until 2009. By that time, according to the CPSC, HMI had received some 120 reports from consumers about the cleaners overheating and causing property damage.

Two consumers had also sustained injuries by 2009, according to the CPSC. HMI and the CPSC had announced the recall of 44,000 floor cleaners at that time. But HMI claimed at the time that it had received only 40 consumer complaints of overheating and...
Federal law requires manufacturers, distributors and retailers to report to CPSC immediately, within 24 hours, after obtaining information reasonably supporting the conclusion that a product contains a defect which could create a substantial product hazard, creates an unreasonable risk of serious injury or death or fails to comply with any consumer product safety rule or any other rule, regulation, standard or ban enforced by CPSC.

The CPSC provisionally accepted the penalty agreement in a 2-to-1 vote. As part of the agreement, HMI has also agreed to implement a compliance program, through which it would make sure that it reports the necessary information to the agency within legally required deadlines. HMI has also agreed to report any problems in its internal controls that could impair accurate reporting to the CPSC. The CPSC said further in its statement:

HMI agreed to provide written documentation of such improvements, processes and controls, upon request of CPSC staff, to cooperate fully and truthfully with CPSC staff and to make available all information, materials and personnel deemed necessary to staff to evaluate the company’s compliance with the terms of the agreement.

The settlement also suspends $325,000 of the penalty and monthly installment payments, based on HMI’s financial limitations. The CPSC, like other federal regulators in recent years, has targeted companies’ internal policies as part of their enforcement push.

Source: Law360.com

Georgia Agency Files Suit Against Debt Collection Lawsuit

A lawsuit was filed by the Georgia Consumer Finance Protection Bureau (CFPB) in a federal district court against a Georgia-based firm, Frederick J. Hanna & Associates, and its three principal partners for operating a debt collection lawsuit mill that uses illegal tactics to intimidate consumers into paying debts they may not owe. The Bureau alleges that the Hanna firm churns out hundreds of thousands of lawsuits that frequently rely on deceptive court filings and faulty or unsubstantiated evidence. The CFPB is seeking compensation for victims, a civil fine, and an injunction against the company and its partners. CFPB Director Richard Cordray stated:

The Hanna firm relies on deception and faulty evidence to drag consumers to court and collect millions. We believe they are taking advantage of consumers’ lack of legal expertise to intimidate them into paying debts they may not even owe. Today we are taking action to put a stop to these illegal debt collection practices.

The Hanna firm focuses exclusively on debt collection litigation, and its three principal partners, Frederick J. Hanna, Joseph Cooling and Robert Winter, play an active role in the company’s business strategies and practices. The firm performs debt collection activities and typically files lawsuits if those efforts do not lead to collections.

The CFPB alleges that the company operates like a factory, producing hundreds of thousands of debt collection lawsuits against consumers on behalf of its clients, which mainly include banks, debt buyers, and major credit card issuers. Between 2009 and 2013 the company filed more than 350,000 debt collection lawsuits in Georgia alone. The CFPB further alleges the Defendants collected millions of dollars each year through these lawsuits, often from consumers who may not actually have owed the debts.

The CFPB alleges that the defendants violated the Fair Debt Collection Practices Act (FDCPA). Among other things, this Act prohibits making misrepresentations to consumers, and specifies prohibits misrepresenting to a consumer that a communication is from an attorney. The CFPB also alleges that the defendants violated the Dodd-Frank Wall Street Reform and Consumer Protection Act, which prohibits deceptive acts or practices in the consumer financial marketplace. Violations alleged in the CFPB’s complaint include:

- **Intimidating consumers with deceptive court filings:** The firm files collection suits signed by attorneys when, in fact, the lawsuits are the result of automated processes and the work of non-attorney staff, without any meaningful involvement of attorneys. The resulting lawsuits misrepresent to consumers that they are “from attorneys.” This process allows the firm to generate and file hundreds of thousands of lawsuits. One attorney at the firm, for example, signed more than $300,000 debt collection lawsuits in a two-year period.

- **Introducing faulty or unsubstantiated evidence:** The firm uses sworn statements from its clients attesting to details about consumer debts to support its lawsuits. The firm files these statements with the court even though in some cases the signers could not possibly know the details they are attesting to. In a substantial number of cases, when challenged, the firm dismissed lawsuits. Since 2009, the firm has dismissed more than 40,000 suits in Georgia alone, and the CFPB believes it does so frequently because it cannot substantiate its allegations.

The Bureau, in its lawsuit, seeks to stop the alleged unlawful practices of the Hanna firm and its three principal partners. The Bureau has also requested that the court impose penalties on the company and its partners for their conduct and require that compensation be paid to consumers who have been harmed. The full text of the complaint can be found at:

http://files.consumerfinance.gov/f/201407_cfpb_complaint_hanna.pdf. It will be most interesting to see how this lawsuit works out.

Source: Consumerfinance.gov

FTC Files Suit Against Amazon Over Accidental In-App Purchases

In a lawsuit filed by the Federal Trade Commission (FTC), Amazon.com is accused of unlawfully charging parents millions for in-app purchases made by their children. The FTC is seeking a court order requiring Amazon to refund customers for accidental in-app purchases. For most parents, seeing a random $358 charge on their credit card bill would elicit a lot of questions. But for the parents of the 71 percent of children who play mobile games such as Angry Birds or Temple Run, those seemingly random charges are becoming more common as the games allegedly “trick children into buying virtual goods with real-world money.” That’s why the FTC says it sued Amazon.com, alleging that the online retailer unlawfully billed parents millions of dollars for the mobile games’ in-app purchases inadvertently made by their kids.

In the complaint, filed in U.S. District Court in Washington state, the FTC alleges that thousands of parents—including one consumer whose daughters racked up $358 for in-game charges—fell victim to a system that allows charges without any step “that requires a password to validate payment information.” The FTC is seeking a court order requiring Amazon to refund customers for “millions of dollars” in unauthorized charges and to ban the company from billing parents for in-app charges made by children without parental consent.
According to the complaint, many of the “kid-friendly” games and apps on Amazon mobile devices such as the Kindle Fire encourage children to pay for virtual in-game items with real-world money, usually connected to their parents’ credit cards. It’s alleged that games such as “Tap Zoo,” where children populate a virtual zoo with various animals, require kids to pay for animals and other game objects in “coins” or “stars,” some of which are paid through in-game currency and some by real-world credit card charges. Jessica Rich, FTC consumer protection director, says they “are really trying to make clear that this cardinal rule … of consumer protection applies in the mobile space.” She said Amazon had received thousands of complaints and millions of dollars in revenue from accidental app purchases.

This isn’t the first time the FTC has gone after app stores for failing to provide adequate protection for parents—the regulatory body reached a settlement with Apple in January for similar issues. Apple refunded about $32.5 million to parents and changed billing practices to require more stringent password protection. A class-action lawsuit was filed against Google in March by parents over unauthorized charges for in-game apps.

It’s alleged in the recent suit that Amazon collects 30 percent of all in-app charges and has made tens of millions of dollars through general in-app purchases, and that it did not require password certification on in-app purchases when the company launched the service in November 2011. In 2012, Amazon added a password requirement for any in-app purchases exceeding $20 and in 2013 added the requirement for all in-app purchases. However, according to the FTC, changes were made slowly and the company’s refund policy was too Byzantine for even the most dogged consumers.

Hudson Kingston, legal director of the Center for Digital Democracy, said the lawsuit should make more companies aware of the downsides of levying hidden costs such as in-app purchases on consumers. He added that “It’s better to have a customer that is happy and knowingly spending $5 on an app than having a lawsuit with the FTC.” That is a pretty good assessment of the situation, but it fails to factor in “corporate greed.”

Source: Associated Press

**FTC SUES T-MOBILE OVER HUNDREDS OF MILLIONS IN BOGUS CHARGES**

In another lawsuit, the Federal Trade Commission (FTC) has sued T-Mobile. The company is accused of collecting hundreds of millions of dollars from its customers in bogus charges. It was alleged that T-Mobile earned a windfall in recent years from third-party merchants offering bogus text message subscriptions for things like flirting tips, horoscopes and celebrity gossip. Those charges frequently weren’t authorized by customers.

It was alleged that the charges were concealed on customers’ monthly bills. As many as 40 percent of those customers hit with these monthly charges sought refunds. This, according to the FTC, should have been “an obvious sign to T-Mobile that the charges were never authorized.” The complaint alleges that the charges took place between 2009 until December of last year, and T-Mobile had documentation of high complaint levels as early as 2012.

The lawsuit comes as T-Mobile engages in an aggressive marketing campaign dubbed the “un-carrier” strategy. The company has said its goal is to “upend the mobile industry.” T-Mobile is itself in the process of finalizing a $52 billion merger with Sprint, according to reports. If approved by regulators, the deal would unite the nation’s third- and fourth-largest carriers into a combined entity with subscriber numbers comparable to Verizon and AT&T. The Federal Communications Commission is also investigating T-Mobile’s alleged “cramping.”

Source: CNN Money

**APPLE AGREES TO PAY UP TO $400 MILLION TO SETTLE E-BOOKS CLAIMS**

Apple Inc. has agreed to pay up to $400 million to settle claims brought by 33 state attorneys general and private class action Plaintiffs that the company conspired to fix prices on e-books, bringing potential compensation for e-book purchasers up to $566 million. Apple agreed to pay $400 million to consumers, as well as $50 million in payments to the states and attorneys’ fees, if the lower court’s July 2013 liability ruling against the company is affirmed by the Second Circuit.

If the decision is remanded for reconsideration, Apple will pay $50 million to purchasers, along with $20 million in attorneys’ fees and state payments. But Apple will pay nothing if the lower court’s ruling is reversed. When combined with the $166 million already paid by publishers in earlier settlements, consumers stand to receive up to $566 million if the lower court’s liability judgment against Apple is upheld.

New York Attorney General Eric T. Schneiderman praised the settlement in a statement, saying it proves “even the biggest, most powerful companies in the world must play by the same rules as everyone else.” Steve Berman, a lawyer with the Hagens Berman Sobol Shapiro firm, who represents e-book purchaser Plaintiffs in the case, believes the settlement is “confirmation that the antitrust laws apply equally to all citizens.” Steve had this to say:

*We have obviously studied [U.S. District Judge Denise Cote’s] July 2013 ruling in detail, and believe that the Second Circuit will agree with her conclusion that Apple did violate federal antitrust laws.*

Three publishers—Hachette Book Group Inc., HarperCollins Publishers LLC, Simon & Schuster Inc.—agreed to settle with the Department of Justice (DOJ) before it even filed the case, while Penguin Group USA Inc. and Holtzbrinck Publishers LLC reached similar settlements in the run up to the liability trial with the DOJ and the states. After going to trial in early 2013, Judge Cote ruled in July that Apple had orchestrated a plot with the five publishers to raise e-book prices by moving from a wholesale model in which retailers set the final price to an agency distribution model in which the publisher set the price and the retailers take a commission. Judge Cote’s ruling established Apple’s liability for violations of a section of the Sherman Act that bars conspiracies to restrain trade.

Apple, which is appealing the liability finding and the government’s injunction, wanted to get a trial on damages in the suit put on hold while the Second Circuit reviews the case, but its most recent effort failed to sway the appeals court in late May. Based on reports, the company could have faced huge damages in the case. The Plaintiffs’ damages expert calculated the actual damages in the case to be $280 million, which could have been trebled to $840 million. Even after offsetting that by the $166 million the publishers paid out, Apple could have been responsible for $674 million.

Source: Law360.com

**XXV. RECALLS UPDATE**

When I started this part of this issue, I thought that the GM recalls had slowed down but was I ever so wrong. Two more GM recalls were announced just before this issue was sent to the printer. Hopefully, there wasn’t another that we missed. In any event, we have included some of the more significant product recalls that were issued in July. If more information is needed on any of the recalls, readers are encouraged to...
contact Shanna Malone, the Executive Editor of the Report. We would also like to know if we have missed any safety recalls that should have been included in this issue.

**Six New GM Recalls Involving 717,950 Vehicles**

General Motors has now recalled another 717,950 newer-model U.S. vehicles for a variety of defects. When this was being written, the number of GM recalls this year was 60, totaling more than 29 million vehicles. GM says it knows of three crashes and two injuries, but no deaths, linked to the new recalls. The cars recalled are:

- **414,333** 2011-2012 model year Chevrolet Camaro; 2010-2012 model year Chevrolet Equinox and GMC Terrain; 2011-2012 Buick Regal and LaCrosse; and 2010-2012 Cadillac SRX models in the U.S. equipped with power height adjustable driver or front passenger seat structures. The bolt that secures the height adjuster actuator can fall out, allowing the seat to move up and down without restraint. GM is aware of one crash and three injuries but no fatalities related to this condition.

- **124,008** model year 2014 Chevrolet Caprice, 2014 Chevrolet SS, 2014-2015 Chevrolet Silverado standard duty and heavy duty, 2013-2014 Cadillac ATS, 2014 Cadillac CTS, 2014 Cadillac ELR, 2013-2014 Buick Encore; and 2014-2015 GMC Sierra standard and heavy duty, because some might have a defective seat weld that won’t hold the seat in place properly. Dealers will inspect the weld. If it is insufficient, dealers will replace the lower seat track at no charge. Fewer than 1 percent of welds are expected to require seat track replacement. GM is unaware of any crashes or injuries as a result of this issue.

- **120,426** 2011-2013 model year Buick Regal and 2013 model year Chevrolet Malibu equipped with front turn signals that use two bulbs in each front turn signal. If one of the two bulbs burns out in either signal, the turn-signal indicator on the instrument panel will still flash normally, giving the driver no warning of the problem. Dealers will reprogram the body control module to fix the condition. GM knows of no crashes, injuries or complaints related to this issue.

- **57,242** 2014 Chevrolet Impalas equipped with belt-drive electric power steering. Paint could have seeped onto a connection, creating a poor electrical ground connection. Power assist to the steering can fail. The cars still can be steered, but require much more effort. Dealers will inspect and clean paint from behind the ground nut, re-torque the nut and update the power steering control module software at no charge. GM is aware of one crash but no injuries or fatalities related to this condition.

- **1,919** 2014-2015 Chevrolet Sparks imported from Korea assembled with a lower control arm bolt not fastened to specification. The defect can result in loss of steering while driving. Dealers will inspect the left and right hand lower control arm attaching bolts to assure they are tightened to specification. GM knows of no crashes, injuries or fatalities related to this condition.

- **22** 2015 model year Chevrolet Tahoe/Suburban and GMC Yukon/Yukon Denali vehicles in the U.S. The roof rails might have been installed with the wrong hardware, tearing or punching holes in the roof-rail safety air bags. Eight of these vehicles are in dealer stock and will be repaired before being sold.

**Still Another GM Recall**

General Motors has also recalled almost 29,000 Saab 9-3 convertibles from the 2004-11 model years to repair the driver’s side seat belt. The automaker, in a report to the National Highway Traffic Safety Administration (NHTSA), said the automatic tensioning retractor that keeps the belt taut could break. At the time the vehicles were assembled, Saab was a subsidiary of General Motors, which is no longer the case.

**Subaru Recalls 660,000 Vehicles For Possible Brake Problems**

Subaru of America Inc. has recalled more than 660,000 vehicles, including its model years 2005 to 2009 Outback and Legacy vehicles, for a potential problem that could cause brake lines to rust and brake fluid to leak. In documents filed with the National Highway Traffic Safety Administration (NHTSA), the automaker said that brake lines could corrode when they come into contact with salt water through an opening in the fuel tank protector. Subaru is a subsidiary of Fuji Heavy Industries.

Subaru says the potential defect has not caused any reported incidents so far. The automaker previously recalled 215,000 legacy and Outback models in April 2013 for the same problem. The current recall also involves other models, including the 2008 to 2011 year Impreza and 2009 to 2013 Forester vehicles. Subaru said in its filings with NHTSA:

> Brake line corrosion may result in brake fluid leakage. Fluid leakage may result in longer distances being required to slow or stop the vehicle, increasing the risk of a crash.

Subaru’s dealers will provide the free services of testing the recalled vehicles and fixing them, if needed. Dealers will test the brake systems by holding down brake pedals and checking for leaks, according to Subaru. If there is no leakage, it will treat the vehicle by rust-proofing the affected components with anti-corrosion wax. Subaru said, and if its test detects brake fluid leaks, then it will replace the brake lines before treating the parts with the wax.

Subaru in March 2012 recalled some 275,000 Subaru Forester vehicles because their seat belts may prevent a child restraint system in the rear center seat from securely attaching to the car. That recall involved certain model year 2009 through 2012 Foresters manufactured from Nov. 26, 2007, through March 13, 2012. The automatic locking retractor in the rear center seat belts of these vehicles do not meet locking requirements and fail to comply with federal safety crash protection standards, according to the notice that NHTSA posted at the time.

The seat belt problem could lead to the insecure installation of a child restraint, which “can increase the risk of injury to a child during a crash,” the notice said. According to the noncompliance information report that Subaru had filed with NHTSA, automatic locking retractors are provided in the Forester vehicles for every seat except the driver’s in order to allow for the installation of a child safety seat.
CHRYSLER RECALLS 895,000 SUVs FOR FIRE RISK IN VANITY MIRRORS

Following an investigation by the National Highway Traffic Safety Administration (NHTSA), Chrysler has recalled almost 895,000 sport utility vehicles because a wiring problem in the vanity mirror can cause a fire. A report was posted on NHTSA’s website. The action or this recall covers 2011-14 Jeep Grand Cherokee and Dodge Durango models, including about 651,000 in the United States, 45,700 in Canada, 23,000 in Mexico and 175,000 outside North America.

Chrysler said that a sun visor screw could penetrate a wire for the vanity light, causing a short circuit that could lead to a fire. The automaker said it discovered the problem in 2011 at its Detroit assembly plant, following complaints from owners about “sun visor thermal damage.” It concluded that the wire was penetrated when workers at the assembly plant were repairing incorrectly installed headliners and had to remove the visor. To correct the problem, Chrysler says it began making a series of changes to the manufacturing process, the last one early in 2013. The company said it also discovered problems when repairs to the visor or headliner had been performed at dealerships.

In August 2013, federal regulators began an investigation, responding to owner complaints about fires near the vanity mirror. The investigation was upgraded last January to a more serious engineering analysis after NHTSA received 41 complaints about the problem and 38 reports of fires, including three with injuries. Many of the fires were minor and involved smoldering, but some owners reported more serious problems. NHTSA reported:

In some reports the fire spread to the front seats and/or door panels of the vehicle. In one report the sunroof was damaged, causing the glass to shatter.

In a March 19 letter, Chrysler told NHTSA that its internal investigation had concluded that the problem was extremely limited and resulted in little damage. The automaker also said that it had received no reports of injuries and that “there is no unreasonable risk to motor vehicle safety.” The agency, however, pushed its case and the automaker agreed to the recall. In other actions:

HONDA RECALLS VEHICLES

Honda Motor Co. has recalled about 14,000 Acura ILX and ILX Hybrid sedans from the 2013-14 model years because the headlight reflectors could be damaged by heat, diminishing their light output, according to a report posted on the National Highway Traffic Safety Administration (NHTSA) website.

HONDA ADDS MORE CARS TO RECALL OVER AIR BAG FLAW

Honda Motor Co. has expanded the scope of its recall over defective air bags made by Takata Corp. to include vehicles in the state of California. This brings the total number of affected states to nine. Honda announced in June a voluntary recall of more than 2 million vehicles featuring defective Takata air bags that have the potential to explode or fail to inflate. With the addition of the California vehicles, the automaker said the recall now includes approximately 3 million vehicles.

Honda was informed in June that an air bag in a 2005 model year Accord deployed with too much pressure and subsequently began looking into the alleged problem. Honda then joined the ranks of fellow Japanese auto manufacturers Toyota Motor Corp., Mazda Motor Corp. and Nissan Motor Corp. when it announced it was recalling more cars due to the defect in Takata air bags, bringing the total number of recalled cars by the automakers to almost 10 million. The announcement followed a recall last year that saw more than 3.3 million Toyota, Honda and Nissan vehicles recalled for the problem.

Honda’s June recall included affected models registered or sold in geographic regions known for high humidity—Alabama, Florida, Georgia, Hawaii, Louisiana, Mississippi, South Carolina, Texas, Puerto Rico and the U.S. Virgin Islands. At the time, the company said it would replace the passenger front air bag inflator, free of charge, according to a statement. Now that the recall has been expanded to include California, the automaker says it doesn’t have a firm number on the potentially problematic vehicles, since the number will come from a comparison of Honda’s production information with DMV records from the affected states.

The National Highway Traffic Safety Administration (NHTSA) Office of Defects Investigation (ODI) said several manufacturers in recent years have conducted safety recalls of vehicles for rupturing air bags. Between 2008 through 2011, Honda conducted a series of recalls concerning driver’s side bag inflator ruptures on various 2001 through 2004 models. ODI said none of the recalls were regional in nature or attributable to atmospheric conditions in field use. ODI said in the June notice of investigation:

ODI is opening this investigation in order to collect all known facts from the supplier and the vehicle manufacturers that it believes may have manufactured vehicles equipped with inflators produced during the same period as those that have demonstrated rupture events in the field.

BMW RECALLS 1.6 MILLION VEHICLES TO FIX FAULTY PASSENGER AIRBAG

Bayerische Motoren Werke AG (BMW) has recalled 1.6 million cars globally for a front-passenger airbag defect that has caused other manufacturers to repair millions of vehicles. BMW 3-Series models produced from May 1999 to August 2006 should be brought in to fix bag-inflation devices, the Munich-based company said in a statement. The project is in addition to a 240,000-car recall for the flaw in vehicles built in 2001 through 2003 that was announced in mid-2013. Cars already brought in under that program don’t need to be repaired, BMW said. BMW said that it isn’t aware of any incidents related to air bags in its cars.

MITSUBISHI JOINS AUTO RECALLS OVER TAKATA AIR BAGS

Mitsubishi Motors Corp. has also joined the airbag recall brigade. The automaker is telling customers in Florida, Hawaii, Puerto Rico and the Virgin Islands to bring in their 2004-05 Lancer sedans to replace air bags that may have defective inflators, the latest recall stemming from problems with the Takata Corp-manufactured equipment. The company told the National Highway Traffic Safety Administration (NHTSA) it will voluntarily participate in the agency’s investigation into whether humidity is affecting the effectiveness of the inflators, possibly causing them to overinflate the passenger-side front air bags.
Blue Bird has recalled more than 2,500 All American school buses and some transit buses to fix a problem that could make steering more difficult. The company also is recalling a smaller number of school buses that may be prone to a propane fuel leak. The school bus maker said it has received no injury or accident reports related to any of these recalls.

Blue Bird Corp. said the steering problem can develop on some buses made between 2011 and last May if a steering shaft clamp comes into contact with a rubber close-out boot on the floor. It also is recalling more than 400 transit buses to fix the same problem. The company says it has been monitoring the issue since last September, when it received its first report of the clamp contacting the boot. The company issued the recall after determining that the increased steering effort required in this situation could lead to an accident.

The company also is recalling 388 Vision school buses made in 2012 or 2013 to address the possible fuel leak, which could lead to a fire. The company said in a report to the National Highway Traffic Safety Administration (NHTSA) that this can happen in “severe environments” when an aluminum fuel line fitting corrodes where it meets a brass supply valve housing on the fuel tank. The propane fuel systems are made by Roush Clean Tech LLC, and the aluminum fuel line fitting will be replaced with a stainless steel version.

Harley-Davidson added another cable strap to further restrain the brake lines so that they could not be pinched under the fuel tank mounting bracket of a police motorcycle that was being set up for service. The recall investigation committee then initiated a probe and analysis of the issue, according to the company’s defect notice. As of Oct. 8, 2013, Harley-Davidson had reported a total of six warranty claims potentially related to the pinched brake line, including a single crash with no injuries.

The company then added a cable strap to better retain the brake lines so that they could not be pinched under the fuel tank mounting bracket and closed the investigation. In May, the committee reopened its investigation after identifying a Touring bike with a brake line pinched in a different location, between the fuel tank and the frame several inches forward of the rear fuel tank mounting bracket.

Harley-Davidson said its recall investigation committee was advised in 2013 of a pinched brake line under the rear fuel tank mounting bracket of a police motorcycle that was being set up for service. The recall investigation committee then initiated a probe and analysis of the issue, according to the company’s defect notice. As of Oct. 8, 2013, Harley-Davidson had reported a total of six warranty claims potentially related to the pinched brake line, including a single crash with no injuries.

To address this issue in production, Harley-Davidson added another cable strap to further restrain the brake lines in this newly discovered area. There have been 39 warranty claims potentially related to this issue, four of which reported crashes (with one reported minor injury), according to the company.

In June, upon review of the recall committee’s investigation, the company’s executive management made the determination to issue a safety-related recall. The company said that “If this condition remains undetected, it could cause front brake fluid pressure to increase while riding, possibly resulting in a front wheel lock-up.” Harley-Davidson says it initiated this recall to correct this condition in the affected motorcycles.

Harley-Davidson Motor Co. is recalling 66,421 of the 2014 anti-lock braking system-equipped Touring and CVO Touring motorcycles that may have been assembled with a brake-line defect that can cause the front wheels to lock up. The National Highway Traffic Safety Administration (NHTSA), in a letter to Harley-Davidson, acknowledged the company’s initiation of a safety recall for models made between July 2013 and May 7. The motorcycles may have been made with the front brake line positioned so that it can be pinched between the fuel tank and frame, which can cause front brake fluid pressure to increase, according to the NHTSA.

NHTSA detailed in its recall acknowledgement:

A pinched brake line will increase the front brake fluid pressure,

possibly resulting in a front wheel lock-up, increasing the risk of a crash. Harley-Davidson will notify owners, and dealers will inspect the motorcycles for brake line damage and replace the damaged lines as necessary. Dealers will also install one or two cable straps to properly prevent the line from being pinched in the future, free of charge.

Graco Children’s Products Inc. has added 1.9 million car seats to a massive recall over buckles that can refuse to open. The original recall was in February. Graco originally recalled 3.7 million forward-facing toddler seats over the buckles, which can become so gunked up with food, juice, formula or vomit that they won’t open. Days after the February recall, the National Highway Traffic Safety Administration (NHTSA) sent Graco a very tough letter saying the recall was “incomplete and misleading” in its characterization of the safety risk involved. The new recall adds rear-facing models for infants, seats NHTSA said in February that Graco had given no reason for excluding the first time. NHTSA said:

The agency ... does not agree that the scope of the [February] Graco recall population is sufficient or that the exclusion of infant car seats from the subject seats in the recall is supported by the facts or by the law. There have been no reported injuries related to this issue or the safe use of the car seats ... Your car seat is safe.

NHTSA had slammed Graco in the February letter for “statements that may lead the public to discount the seriousness of the safety risk presented,” and ordered it to submit a revised recall report. Graco, a unit of Newell Rubbermaid Inc., is currently facing at least one class action over the issues. That suit, in California federal court, was filed in March 2013 and brings four claims on behalf of a class of all Californians who bought seats with the buckle in question manufactured from January 2009 to October 2012. It is alleged that the “Defendants” knew about and concealed the defects in every class car seat, along with the attendant dangerous safety hazards.

NHTSA’s Office of Defects Investigation (ODI) has received upward of 85 complaints of difficulties with the buckles, including nine in which the complainants, including the children through it. In that litigation, Graco filed a third-party complaint in November against the buckle’s manufacturer, AmSafe Commercial Products Inc. In March, after the recall, Graco withdrew that complaint in a filing
citing only "the parties' tolling agreement."

Graco recalled 407,000 more seats in March, saying it had found more of the forward-facing seats that qualified under the February report to NHTSA. In March, NHTSA escalated its investigation, which had begun in 2012, by testing the buckles in its Vehicle Research and Test Center. In a letter announcing that step, ODI said it saw the problem as one of safety. ODI told Graco in a letter:

When a harness buckle of a car seat becomes stuck in the latched condition or becomes difficult to unlatch, it creates an unreasonable risk to safety. ODI believes that the hazards and risks involved in the delay of extricating a child from a rear facing infant car seat in any emergency situation are significantly increased and rise to the level of unreasonable risk.

At the time of the February recall, NHTSA published a series of reports on the car seats, saying it had been investigating the belt buckles since 2012. Among the problems it encountered were that the buckles would get so impenetrable that parents would end up having to pick up the child and the seat—which could together weigh more than 70 pounds—to lift it out of the car in the event of an emergency.

Graco received at least 6,100 complaints about the buckles. NHTSA said in its report. The agency noted a lawsuit against Graco in which a 2-year-old was killed in a car fire after becoming trapped in Graco’s Nautilus car seat when the buckle wouldn’t unlatch. The California class action is Long v. Graco Children’s Products Inc. et al., case number 3:13-cv-01257, in the U.S. District Court for the Northern District of California.

**BIG FIREWORKS RECALLS MOCK SWORD FIREWORKS DEVICES DUE TO IMPACT AND BURN HAZARDS**

About 1,040 units of Big Sword Fountain devices have been recalled by Big Fireworks. Consumers should stop using this product unless otherwise instructed. The handheld fountain device can unexpectedly explode, posing a risk of impact and burn to the user. This recall involves Big Sword fireworks devices. The mock sword is a handheld fountain that is intended to emit sparks from the tip of the sword. The blue and yellow sword has the Big Fireworks logo and the words “Big Sword” printed on the front. A yellow cardboard tag attached to the handle of the device has “Big Sword” and a caution statement printed on it. The sword measures 50 inches and has model number 3609 printed above the product’s barcode. The company has received two reports of the fountain exploding while in use. No injuries have been reported.

The fireworks were sold at Big Fireworks retailers and wholesale distributors nationwide from April 2014 to June 2014 for about $13. Consumers should immediately stop using the recalled fireworks devices and return them to the place of purchase to receive a full refund. Contact Big Fireworks toll-free at 866-514-6225 from 8:30 a.m. to 5 p.m. CT Monday through Friday or online at www.bigfireworks.com then click on the Recall tab at the bottom of the page for more information.

**PORTER-CABLE FIXED-BASE PRODUCTION ROUTERS RECALLED DUE TO ELECTRICAL SHOCK HAZARD**

Fixed-base routers and router bases have been recalled by Black & Decker (U.S.) Inc., doing business as Porter-Cable, Towson, Md. The router base handles are not insulated, posing an electric shock hazard. Four Porter-Cable 3 1/4 horsepower, electric, fixed-base production routers and one production router base are being recalled. The recalled routers are about 11 inches tall and 7 inches wide. The top of the router motor is black plastic and has the on/off switch for the router. The base is painted gray and has two side handles, an adjuster ring on the top and a clamp screw on the rear. The side handles on the base of recalled routers have no insulation. The Porter-Cable name and logo are on the front of the base. The recalled routers and base were manufactured from 1990 to April 2014.

The router model number and the manufacture date code are on a metal plate on the back of the upper motor housing. The date code consists of the year of manufacture, the week of manufacture and the manufacturing plant code in the YYYY WW-XX format. The router base is model number 75361 and is also sold separately. The model number is located on the side of the base opposite the Porter-Cable label.

**FIBERGLASS BOOM MAY CONDUCT ELECTRICITY**

Altec Industries, Inc. (Altec) has recalled certain model year 2009-2012 AH75, AH85, and AH100 Aerial Devices manufactured October 2009 through December 2012. The affected devices may allow electricity to be conducted through the boom due to water entering into the fiberglass layers. Additionally, the joint connecting the fiberglass insert and the steel boom components may fail. A fiberglass lower boom insert that can conduct electricity increases the risk of electrocution to the operator should the boom contact a power line. If the joint between the fiberglass insert and the steel boom component fails, the boom may fall, putting the operator at an increased risk of injury.

Altec says it will notify owners, and dealers will do supplemental dielectric testing and replace the lower boom, free of charge. The recall is expected to begin on July 28, 2014. Owners may contact Altec customer service at 1-877-462-5832. Altec’s number for this recall is CSN 598.

**OEUF RECALLS TO REPAIR CRIBS DUE TO ENTRAPMENT HAZARD**

About 14,000 Sparrow Cribs have been recalled by Oeuf LLC, of Brooklyn, N.Y. The slats/spindles and top rail can detach from the cribs and pose an entrapment hazard to a child. The recall includes four models of Oeuf Sparrow cribs. The cribs were sold in the colors birch, grey, walnut and white. The recalled cribs were manufactured between July 2007 and January 2014 and have one of the following model numbers: 1SPCR, 2SPCR, 4SPCR or
that have not reached the expiration date listed on the products. Unique is initiating the recall due to the U.S. Food and Drug Administration’s (FDA) concerns associated with Unique’s compounding facilities and compounding processes that FDA contends present a lack of sterility assurance and were observed during recent FDA inspections.

In the event a sterile product is compromised, patients are at risk for serious and possible life-threatening infections. To date, Unique says it has received no reports of injury or illness associated with the use of its sterile preparations. The recall includes all sterile compounded preparations that Unique has supplied to its customers within expiry. Non-sterile preparations are not affected by this recall. The affected products were distributed in syringes, vials, and bags.

The preparations covered by this recall were distributed nationwide. Until further notice, health care providers should stop using all lots of sterile products prepared by Unique that are within their expiry period and return them to the Company. Unique will be notifying customers by phone, fax, mail, or personal visits to return the products to the Company.

Consumers or health care providers with questions regarding this recall may contact Unique by phone at 888-339-0874, from the hours of 9 a.m. to 5 p.m. CST Central Time, Monday through Friday, or at the following e-mail address: recall@upisolutions.com

Adverse reactions or quality problems experienced with the use of this product may be reported to the FDA’s MedWatch Adverse Event Reporting program either online, by regular mail or by fax. Complete and submit the report Online: www.fda.gov/medwatch/report.htm/ Regular Mail or Fax: Download form www.fda.gov/MedWatch/getforms.htm or call 1-800-332-1088 to request a reporting form, then complete and return the address on the pre-addressed form, or submit by fax to 1-800-FDA-0178.

We have not included all of the July recalls in this issue because of space limits. We included those we believed to be of the highest importance and urgency. If you need more information on any of the recalls listed above, visit our firm's web site at www.BeasleyAllen.com/recalls. We would also like to know if we have missed any significant recall that involves a safety issue. If so, please let us know. As indicated at the outset, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information or to supply us with information on recalls.

**XXVI. FIRM ACTIVITIES**

**EMPLOYEE SPOTLIGHTS**

**DANIELLE MASON**

Danielle Ward Mason, who joined Beasley Allen in 2009, works in the firm’s Mass Torts Section. Her work involves the investigating of claims relating to dangerous drugs and medical devices. Danielle is currently handling cases involving the drug Reglan, which is associated with the development of uncontrolled muscle movements, a condition known as Tardive Dyskinesia.

Danielle also is working on claims related to transvaginal mesh (TVM), also known as a bladder sling. Transvaginal mesh is used to repair conditions such as pelvic organ prolapse (POP) and stress urinary incontinence (SUI). The mesh is used to shore up pelvic organs that have become displaced due to age, childbirth, hysterectomy or obesity. Our firm’s TVM team is reviewing cases involving transvaginal mesh manufactured by American Medical Systems, Bard, Boston Scientific, Caldera, and Johnson & Johnson.

Prior to joining the TVM litigation, Danielle was part of the Hormone Replacement Therapy (HRT) litigation team. She was part of the trial team that secured a $72.6 million verdict on behalf of three Plaintiffs in Philadelphia who took HRT drugs and later developed breast cancer. Danielle also handled cases involving Kugel Mesh, an abdominal hernia repair product manufactured by Davol, Inc. The mesh was recalled in 2005 and 2007 due to defects including breakage of the wire ring along the outer edge of the mesh product that caused bowel perforation and other serious abdominal injuries.

In July, Danielle was named to Lawyers of Color’s Second Annual Hot list, which recognizes early- to mid-career lawyers excelling in the legal profession. She also was featured on “The List,” in RSVP magazine for July/August 2014, which profiles successful young professionals. Danielle was named to the 2014 Super Lawyers “Rising Stars” list, which recognizes the top up-and-coming lawyers—those who are 40 or younger, or who have been practicing 10 years or less. Super Lawyers is a research-driven, peer-influenced rating service of outstanding
lawyers who have attained a high degree of peer recognition and professional achievement.

Danielle is currently serving as a lawyer coordinator in the Middle District of Alabama’s new Pro Se Litigants program. In that program, she provides pro bono volunteer service to Plaintiffs who represent themselves in civil matters. Recently, Danielle was appointed to represent a Plaintiff in the program’s first mediation proceedings, which resulted in a settlement for the Plaintiff. She was recognized by Magistrate Judge Terry F. Moorer for her outstanding service to the client in that case and to the bar.

Danielle graduated cum laude from Faulkner University’s Thomas Goode Jones School of Law in 2007. While at Jones Law School, Danielle was a member of the trial advocacy team and competed in the Buffalo-Niagara Mock Trial Competition in the National Semi-Finals in 2007. She was Senior Editor of the Jones Law Review, was on the Dean’s List, and was selected to Who’s Who Among Students in American Universities and Colleges.

Danielle holds several leadership positions in bar organizations throughout the state. She was recently inducted as the President Elect of the Alabama Lawyers Association, which is the largest and oldest minority bar in Alabama. She also serves as a board member and coordinator for the ALA Student Internship Summer program. She is also a member of the Alabama State Bar, the American Association for Justice, the Alabama Association for Justice and Young Lawyers.

Danielle currently serves on the Alabama Civil Justice Foundation Junior Board of Directors, the Montgomery County Association for Justice Board of Directors, and the AAJ Editorial Board, is Parliamentarian for the Capital City Bar Association, and the Secretary of the Montgomery County Association for Justice. Danielle is married to Dwan Harris, and they have two sons, Jordan, 17, and Jaxon, 7. We are most fortunate to have Danielle in the firm. She is a very hard worker and is totally dedicated to serving her clients and protecting their interests.

DON GILLILAND

Don Gilliland joined the firm in January 2010 as a web developer. In this role, he is responsible for the firm’s internet marketing efforts. Don, along with the rest of the Internet Marketing department, works to promote the firm and attract clients through multiple channels such as social media and websites. Also, Don develops and maintains websites that focus on providing information to the public about issues and cases the firm is pursuing, which may have affected them, or could affect them in the future.

Don says he finally gave in and married his wife, Terri, in 2006 after a six-year courtship. They were blessed with a daughter, Bailey, in June of 2010. Don and Terri are dog lovers and rescued Jake (5) in 2009 and Rosie (5) in 2012. In his down time, Don enjoys spending time with family and friends, reading, playing guitar and watching Auburn Football.

Don is an avid reader and he also is involved in writing short fiction. Don is a very good employee whose work benefits the firm in many very important areas. We are fortunate to have Don with us.

TONY HARRIS

Tony Harris, who has been with the firm for seven years, works as a Staff Assistant to Rhon Jones and for the Toxic Tort Section as a whole. While he currently works primarily on the BP oil spill litigation, he also has worked on the Tennessee Valley Authority litigation, which occurred as a result of a coal ash spill in Kingston, Tenn., in 2008. Tony assists with other various cases when needed. Tony opens files in ProLaw, assists with correspondence and phone calls to clients, maintains and updates the firm’s master client databases. Tony sends letters/mail merges, works in Concordance, schedules and moderates telephone conferences, occasionally does dictation, and he heads up many miscellaneous odds and end tasks that need be done in the section.

Tony’s sister, Fran Harris, also works at the firm in the Mass Tort Section. He says that he has a sweet 4-year-old niece and 2-year-old nephew, whom he adores. Tony is originally from Selma, where most of his family still lives. Tony says he enjoys reading, hanging out at the pool, spending time at home with his family and spending time with friends. Tony is a hard-working employee who is dedicated to his work. We are fortunate to have him with us.

JASON KING

Jason King, who has more than 14 years of experience in web development and design, joined the firm in October 2010 as a web developer. Currently, Jason helps design and administer more than 40 websites and numerous social media profiles on multiple platforms. He also assists with our printed materials including brochures, magazine ads and flyers. He also dabbles in video capturing and editing for the firm.

Jason attended Auburn University Montgomery and John Patterson Technical School before advancing into professional web development. Jason says he enjoys spending time with his family playing games, watching movies and traveling. He also enjoys music, playing the drums, cooking, and watching college football. Jason does very good work for the firm and is a dedicated employee. We are fortunate to have Jason with us in an important role.

JESSICA STAPP

Jessica Stapp, who has been with the firm since July 2010, serves as a Legal Assistant, working with Alison Hawthorne in the Consumer Fraud Section. In this position, Jessica works on all phases of litigation, research, preparing complaints, discovery and trial preparation. She is currently involved in complex litigation—working with the offices of the Attorney Generals in Mississippi and Louisiana, among other states.

Jessica is married to Jason and they have two children; a 17-year-old son, Tray, who is a senior, and 10-year-old daughter, Haley, a 5th-grader at New Life Christian Academy. Jessica graduated from Samford University in 1999 and received CLA Certification in 2000. She is a member of Coosada Baptist Church. She serves as a Girl Scout Troup Leader, serves on the MGSL Board and is a Magic Moments Volunteer. If you don’t know about Magic Moments, I recommend you contact Jessica and let her fill you in on the excellent work this group does. Jessica is another hard-working employee whose work in very complicated litigation requires both ability and dedication. We are blessed to have Jessica with the firm.

SEAT CHECK SATURDAY IS AN ANNUAL EVENT

For the past five years our law firm has sponsored Seat Check Saturday events to bring awareness to National Child Passenger Safety Week. We have partnered with Safe Kids USA and the Alabama Department of Public Health to offer parents and child caregivers the opportunity to have their child safety seats installed or inspected at no cost. The event will be held this year at The Shoppes at EastChase in Montgomery on Saturday, Sept. 13. Qualified seat installation experts will be on hand to inspect and install child safety seats from 9 a.m.-noon.

As we have previously reported, motor vehicle accidents remain the leading cause of death for children ages 3 to 14. Properly installed car seats and booster seats reduce the risk of serious and fatal injuries by more than half. The information set out below indicates how serious this matter is:

• Seven children die each day as a result of improperly fastened child seats;
• 85 percent of child seats are not installed according to manufacturers specifications;

JereBeasleyReport.com 35
Nearly one-third of child seats are not suitable for the vehicles in which they are installed.

For information on a nearby seat inspection site, you can visit the Safe Kids USA website and click on the link that says “In Your Area.” This will provide you with information about Safe Kids Coalition groups in your area, and allow you to search for a seat inspection site near you. National Child Passenger Safety Week is sponsored annually by the National Highway Traffic Safety Administration (NHTSA). You can find more information about child safety seats and vehicle safety at the NHTSA website. The Centers for Disease Control and Prevention (CDC) also has a helpful website with information about child safety seats. If you would like more information on this subject, contact Helen Taylor, Public Relations Coordinator for our firm, at 800-898-2034 or by email at Helen.Taylor@beasleyallen.com.

**XXVII. SPECIAL RECOGNITIONS**

**SAVE OUR JURIES: WEBSITE AIMS TO EDUCATE THE PUBLIC ABOUT ACCESS TO JUSTICE**

The American Board of Trial Advocates (ABOTA) has created an important new resource for the American public to learn about their right to trial by jury and the importance of the civil justice system. In July, ABOTA launched SaveOurJuries.org, a comprehensive and interactive website featuring information about the civil jury system, as provided by the Seventh Amendment to the U.S. Constitution. The site will provide resources and information about current issues affecting the jury system, history and the value of the right to trial by jury. Mark P. Robinson, Jr., National President of ABOTA, says:

Save Our Juries has been designed to go directly to the American public. ABOTA members are passionate about this project, which is consistent with the very reason why ABOTA was founded ... to preserve our civil jury system.

Under the tagline “Save Our Juries: It’s Your Constitutional Right,” the site features information about the history and meaning behind the creation of the 7th Amendment, which ‘ensures that citizens’ civil cases can be heard and decided upon by a jury of their peers. The jury trial provides a forum for all the facts to be presented, evaluated impartially and judged according to the law.” Many people in the U.S. take this right for granted, but it is actually being whittled away by such movements as binding arbitration agreements and the so-called “tort reform” movement. ABOTA warns “Americans are losing a key right without realizing it.”

The site features “Stories of Justice,” which includes information about newsworthy jury verdicts and their impact; opinion pieces from citizens, lawyers, politicians and leaders in the jury trial system; and examples of notable cases that illustrate the significance of our Seventh Amendment right. Visitors to the site can stay informed about the latest issues impacting access to justice through the courts, and find out how they can get involved.

The website also features a blog where visitors may comment on stories relevant to civil justice, access related articles and become a part of the discussion. Those interested in the topic also can follow Save Our Juries on social media including Facebook, Twitter, LinkedIn and Google+ through links on the website.

ABOTA urges website visitors to “Take Action!” saying, “Americans must stand to protect their rights to a jury trial. Without your help, corporations, lobbyists and Congress may change your fundamental right to a trial by jury.” I encourage our readers to visit the site at www.saveourjuries.org.

**Sources: ABOTA, saveourjuries.org**

**“TO KILL A MOCKINGBIRD” CELEBRATES 54 YEARS**

It has been nearly 55 years since the publication of “To Kill A Mockingbird,” a novel by Monroeville, Ala., author Harper Lee. The book has become a standard in classrooms throughout the country. Sadly, it still raises questions and criticisms that the story’s themes are not “politically correct.” Set in Alabama in the 1930s, the book was published in 1960, in a time before the Civil Rights Act, and before the Voting Rights Act. Jim Crow laws were still in place, segregating schools and public places. Yet the story shines a light on the irrationality of racism, during a time when its roots were still very firmly in place.

The novel went on to win a Pulitzer Prize, and in 1962 was made into a movie starring Gregory Peck as one of the central characters, lawyer Atticus Finch, who takes on the challenge of defending a black man accused of raping a white woman. For the world into which Harper Lee delivered her masterpiece, it isn’t hard to understand why such subject matter would raise eyebrows and, in some cases, spark outrage. Overlooking the message of the book, some decreed it inappropriate reading material for school children. That’s an absurdity!

In 1966, Harper Lee addressed some of these criticisms in a letter to a Virginia school board that called for banning the novel. In her book’s defense, she called on another work of literature, George Orwell’s “1984,” which is set in a then-future world where “thought police” seek to control what the population believes and understands by tightly regulating what they may read and watch. She speaks of “double-think,” a concept in the novel where those loyal to the controlling party develop the ability to accept contrary opinions at the same time. Ms. Lee wrote in her letter to the school board:

Surely it is plain to the simplest intelligence that ‘To Kill a Mockingbird’ spells out in words of seldom more than two syllables a code of honor and conduct, Christian in its ethic, that is the heritage of all Southerners. To bear that the novel is ‘immoral’ has made me count the years between now and 1984, for I have yet to come across a better example of doublethink.

In June, “To Kill a Mockingbird” was finally released as an e-book and a digital audiobook, after Ms. Lee refused for years to give permission for the work to enter the digital age. The award-winning novel is the only published work by Harper Lee, who is now 88. The e-book, together with an audiobook narrated by Sissy Spacek, was released July 8 by HarperCollins. In a statement, it seems Harper Lee has made peace with the digital distribution of her work, saying:

I’m still old-fashioned. I love dusty old books and libraries. I am amazed and humbled that Mockingbird has survived this long. This is Mockingbird for a new generation.

I have been a long-time fan of Harper Lee, known to her friends as Nelle, and I consider her only novel to be a true treasure. I have read her book several times and have an original edition. I intend to read the book again!

**Sources: al.com, NPR**

**RSA FUNDS CONTINUE TO THRIVE UNDER DR. DAVID BRONNER’S WATCH**

Dr. David Bronner has been at the helm of the Retirement Systems of Alabama for more than 40 years. As Chief Executive Officer, he oversees the public pension fund, which has assets exceeding $24 billion. The RSA pro-
Dr. Bronner provides a weekly investment update to the entire ERS board. The controlling boards of the RSA and the Employees and Teachers Retirement System Boards of Control make investment policy, while Dr. Bronner, the Secretary Treasurer and RSA staff make investment decisions. The board can make changes to policies and procedures, but the day-to-day investment decision-making largely falls to Dr. Bronner, who oversees all operations.

Dr. Bronner obtained his Bachelor of Arts and Master of Arts degrees at Mankato State University (now Minnesota State University, Mankato), in Mankato, Minnesota. From 1967 to 1969, he was an instructor in the School of Business and Finance at Mankato State. Dr. Bronner then entered the University of Alabama at Tuscaloosa, where he earned his law degree in 1971 and a Ph.D. in 1972. He taught in the Graduate Schools of Business and Education and served as Assistant Dean and Lecturer in the School of Law before taking his current job with the RSA in 1973.

High-profile investments to help Alabama thrive are a hallmark of Dr. Bronner’s leadership at RSA, including office buildings in Montgomery, Mobile and New York and the development of eight luxurious hotels and conference centers in Alabama. Other investments include Raycom Media, with 46 TV stations, and Community Newspaper Holdings, Inc., with more than 160 newspapers that provide free advertising for the state of Alabama.

But if you ask him, Dr. Bronner will tell you he’s most proud of the development of Alabama’s Robert Trent Jones Golf Trail, a renowned collection of 26 championship golf courses at 11 sites that has put Alabama at the top of the list of golf destinations worldwide and helped increase tourism from a $1.8 billion industry to a $9.6 billion industry.

I can say without reservation that David Bronner is one of the smartest and well-versed individuals with whom I have dealt over the years. He has had his critics, but Dr. Bronner has been able to win all of the battles thus far. Most of those battles have been “political” and without merit. Dr. Bronner’s efforts over the years have blessed Alabama and all of the state’s citizens.

Sources: WSFA and the RSA Advisor

XXVIII.
FAVORITE BIBLE VERSES

Carol Thompson, a Legal Assistant in our firm, has worked with Greg Allen in Products Liability Litigation for more than 25 years. She is a great employee and a very good person. In today’s world, Carol says it’s almost impossible to avoid stress and worry, whether related to a job, family or a personal matter. In fact, Carol says in her family, she is known as the “worrywart” and that they tell her that she “worries about not having anything to worry about!”

Carol said it took her a long time, but she has finally realized that if she just puts everything in God’s hands, and tells Him her needs, God will handle things for her. Carol says her prayer time in the morning is on 1-65 coming in to work from Prattville. She calls it her “Highway to Heaven,” and says that her first prayer is to thank God for everything He has done in her life and for her many blessings. Her second prayer, she says is from Philippians.

Be anxious for nothing, but in every thing by prayer and supplication, with thanksgiving, let your requests be made known to God;

Philippians 4:6

My longtime friend, Dr. David Thrasher, sent in a timely verse for this issue. David is a prominent medical doctor in Montgomery and is highly respected.

Two women will be grinding at the mill: one will be taken and the other left. Watch therefore, for you do not know what hour your Lord is coming.

Matthew 24:41-45

Beverly Larkin, who works in our Accounting Department, sent in a verse for this month. This dedicated and hard working employee is an inspiration to all of us. She truly loves the Lord.

Let not your heart be troubled; you believe in God, believe also in Me. In My Father’s house are many mansions, if it were not so, I would have told you. I go to prepare a place for you. And if I go and prepare a place for you, I will come again and receive you to Myself; that where I am, there you may be also. And where I go you know, and the way you know.

John 14:1-4

Linda Rush also sent in a verse this month. She and her husband Jim have been long-time friends of ours.

If you abide in Me, and My words abide in you, you will ask what you desire, and it shall be done for you. By this My Father is glorified, that you bear much fruit; so you will be My disciples.

John 15:7-8

Michael Respess, who handles estate sales and auctions in the Montgomery area and who does appraisals of antiques, sent in his favorite verse. Sara and I have known Michael for several years and he is a very good friend.

Come to Me, all you who labor and are heavy laden, and I will give you rest.

Matthew 11:28

XXIX.
CLOSING OBSERVATIONS

A TRUE ROLE MODEL

I wrote about the need for positive role models in the July issue. My friend, Dr. George Mathison, the senior pastor at the Auburn Methodist Church, wrote a piece...
Recently about his older brother Dr. John Ed Mathison, John Ed, who has also been a good friend of mine over the years, served as the Senior Pastor at Frazier United Methodist Church in Montgomery until his retirement. George tells about his big brother in the following:

Next to my dad, the most influential man in my life is my brother, John Ed. I remember as a little boy growing up in the Methodist parsonage in Opelika how I looked up to him and wanted so much to be like him. We shared the same bedroom, and I remember how lonely I felt when he was graduated from Clift High School in Opelika and went away to Young Harris College to begin his college studies. I remember the first night I cried myself to sleep because I missed him so much. I remember how lonely that room was because I missed my brother.

John Ed was powerfully influential in the five most important decisions of my life. First, in him I saw the love of God, and because of his faith I committed myself in faith to that same God.

Secondly, John Ed felt God’s call upon his life to go into the ministry when he was in the 10th grade in high school. His calling was so genuine and so real that he immediately went to work and was licensed to preach as a Methodist minister at the young age of 16. I saw what “a call to ministry” was in his life, and God’s call upon my life to ministry was in many ways modeled by him.

Thirdly, John Ed instilled within me a love for tennis. For several years he was the No. 1 player in his age division in the state of Alabama, and he was ranked No. 1 in the South when he was in the 35-year age group. John Ed attended college on a basketball and tennis scholarship. I remember bow he taught me to love tennis as he worked and practiced with me on the old concrete tennis courts behind Northside School in Opelika. Because of his efforts, I was able to attend college on a tennis scholarship, and tennis is a sport that I have retained throughout my life.

Fourthly, be inspired within me a hunger for education—and a desire to go “the second mile.” Following his graduation from seminary at Emory, he went on to get another degree from Princeton and a doctorate at Emory. Because of John Ed’s example, after I graduated from Emory, I went on to graduate school at Sewanee, Vanderbilt, and Yale.

Fifthly, it was because of him that I met Monteigne. I was a senior in high school when John Ed was invited to preach at a youth gathering at Camp Glory in Perdido Beach, Ala. Young people from several churches in our conference were in attendance. I went along with John Ed as we drove down from Opelika to the Alabama coast. We were in our dad’s new four-door hardtop Pontiac. We listened to the Big BAM radio station out of Montgomery, and we drove with the windows down. We were COOL when COOL wasn’t even COOL yet. It was during that week that I met a pretty little girl from Pensacola, Fla. Her youth group from Warrington Methodist Church was in attendance at the camp. She was only 12 years old. Her name was Monteigne. Eight years later, at John Ed’s parsonage when he was serving the South Brookley United Methodist Church in Mobile, I asked her to marry me.

Yes, John Ed has had a tremendous influence upon my life, and through his ministry at Frazer, he has powerfully impacted the United Methodist Church. This Sunday he will be preaching in the three sanctuary services. I will be preaching at the Chapel of the Living Waters at Lake Martin. This chapel is across the lake from the Church in the Pines. Please be in prayer for Monteigne and me, and our love and thoughts will be with you, John Ed. Charles.

The above is a perfect example of what being a positive role model is all about. It shows the effect of being a role model and what it can bring about. In this instance, it was in a family setting and it brought about a tremendous result.

**Some Monthly Reminders**

If my people, who are called by my name, will humble themselves and pray and seek my face and turn from their wicked ways, then will I hear from heaven and will forgive their sin and will heal their land.

2 Chron. 7:14

All that is necessary for the triumph of evil is that good men do nothing.

Edmund Burke

Woe to those who decree unrighteous decrees, Who write misfortune, Which they have prescribed. To rob the needy of justice. And to take what is right from the poor of My people, That widows may be their prey, And that they may rob the fatherless.

Isaiah 10:1-2

I am still determined to be cheerful and happy, in whatever situation I may be; for I have also learned from experience that the greater part of our happiness or misery depends upon our dispositions, and not upon our circumstances.

Martha Washington (1732—1802)

The only title in our Democracy superior to that of President is the title of Citizen.

Louis Brandeis, 1937

U.S. Supreme Court Justice

The dictionary is the only place that success comes before work. Hard work is the price we must pay for success. I think you can accomplish anything if you’re willing to pay the price.

Vincent Lombardi

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XXX.

**PARTING WORDS**

Recently, I was thinking about the developing trend of folks taking pictures of themselves and I believe that it’s called “selfies.” If that isn’t the correct term, it’s close enough. These parting words are intended primarily to be read by our male readers. My life has taken a number of turns over the years. I have had my “ups” and “downs.” Hopefully, this message, meant for “men” only, will help some of our readers who may be coping with life’s issues.

I grew up in the small Town of Clayton, which was about as rural as they come, but a great place in which to grow up. My earliest years were typical of what generally happened in most small Alabama towns. But as I got older things changed. All young boys in Clayton were expected by the men (and
some years were great. I excelled in sports and had a real relationship with Jesus. My high school else was secondary. Truthfully, I didn’t have totally caught up in sports and everything accepted Jesus at an early age, but I was Christian walk was concerned. I had going through the motions insofar as my who truly loved the Lord—I was really just each of whom was a strong Christian and and my paternal Grandmother, Julia Hurst cheering would have stopped. None of us at that time realized that all of would take on a “hero” status in the town. Union Springs 46-6), the so-called stars defeated Headland 47-0, Brundidge 55-0 and following a big win in Clayton (like when we cially football—winning becomes all ties sorta mixed up. In sports—and espe -young men—you sometimes get your priori- and then we would talk. Obviously, he knew more than the other coaches about my ability and desire to play at the college level. It was at Auburn where I met my wife Sara, who, along with my mother, has been the strongest influence on my life. I can say without reservation that marrying Sara Baker was the best thing that I could have possibly done. When we met, Sara, even though younger, had already graduated Emory in nursing, finishing a five-year course in four years. She was at Auburn to get her education degree. I guess I added something in her pursuit of higher education. She did get the education degree, then a Masters, and was going further until family responsibilities slowed her down. Sara helped me survive during the time I was in politics, where I was really a “fish out of water,” and it was a constant challenge. But it was during that time when I really came to know Jesus and that totally turned my life around. Frankly, I was not very good at the political game and was soundly defeated when I ran for governor. That loss started a new chapter in my life.

Without Jesus, and the support of my family, I would have been devastated by the loss. But on election night I was able to thank the people of Alabama, including those who voted for other candidates, and I left politics. Following the advice given to me by U.S. Senator Jim Allen, I never looked back. I knew that my life and that of my family would be taken care of because of my faith in God.

I was eager to get back to the practice of law and sent resumes to a number of law firms in Montgomery where I wanted to live and work. I must confess that I didn’t get a single response to my inquiries and found myself with no job and a leftover campaign debt. So I opened a law office, as the only lawyer, on Hull Street in Montgomery, and the rest is history. I praise God for all that I have been able to accomplish over the 35 years that followed that January day when I again found myself back in the real world.

Today, I can say without hesitation that being a man requires a solid relationship with Jesus Christ. That relationship makes us tough, strong and secure, but in the right way. If any man reading this hasn’t come to that understanding, I hope and pray that he will. Otherwise, there will definitely come a time when it will be too late. Living a life without the promise of eternal life is a very bad state of affairs.

God wants us to experience a deeper level of security in all areas of our life. Entering into a real relationship with God, through His Son, our Lord and Savior, Jesus Christ, will lead a man into “authentic manhood.” That is the good news for our male readers this month. If any of our female readers decided to read this message—intended for men—that is quite alright. That’s because God loves all of us—men, women and especially children—and He doesn’t discriminate.

May God bless each of you and your families and may you desire to help in spreading the Gospel message to others. That really is our responsibility.

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No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.
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Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley’s law firm, established in 1979 with the mission of “helping those who need it most,” now employs over 75 lawyers and more than 175 support staff. Jere Beasley has always been an advocate for victims of wrongdoing and has been helping those who need it most for over 30 years.